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APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

Nos. 76-1471, 76-1521, 76-1595,
76-1604, 76-1624, 76-1685

FEDERAL COMMUNICATIONS COMMISSION;
CHANNEL TWO TELEVISION COMPANY, *et al.*;
NATIONAL ASSOCIATION OF BROADCASTERS;
AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION;
ILLINOIS BROADCASTING COMPANY, INC.; and
POST COMPANY, *et al.*,

Petitioners,

v.

NATIONAL CITIZENS COMMITTEE FOR BROADCASTING,
FEDERAL COMMUNICATIONS COMMISSION, and
UNITED STATES OF AMERICA,

Respondents.

ON WRITS OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

Volume III – Pages 743-1051
EXHIBITS

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[APPENDIX B: Comments on Professor Levin's Statement in Docket No. 18110 Before The Federal Communications Commission Concerning Program Diversity and Newspaper-owned TV Stations (June 16, 1971) (prepared by National Economic Research Associates, Inc.)]

I. INTRODUCTION AND SUMMARY OF CONCLUSIONS

In a statement presented to the FCC, Professor Harvey J. Levin strongly supports the proposed rules requiring the end of ownership links between newspaper and TV stations operating in the same location. Several aspects of the proposed divestiture are treated in his statement. However, its main concern is with the impact of joint ownership on program diversity regarding which Professor Levin concludes "... the non-newspaper stations in our study have contributed significantly more to diversity and choice."[1] This conclusion, drawn from an empirical study which is appended to his statement, is the basis for Professor Levin's strong support of the proposed FCC rules.

In the statement which follows we examine the study underlying Levin's recommendation and show:

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[1]Statement in Docket No. 18110 before the Federal Communications Commission, *The Policy on Joint Ownership of Newspapers and Television Stations: Some Assumptions, Objectives and Effects*, April 1971; p. 6. All our references to Professor Levin's statement are to this document.

1. The program diversity measure employed by Professor Levin is not an appropriate one;

2. The model designed to isolate the impact of ownership pattern on program diversity was seriously misspecified, rendering the statistical results questionable;

3. Professor Levin erred in the interpretation of his own results. The conclusion "... non-newspaper-owned stations have a statistically significant edge over newspaper-owned stations" (p. 48) does not follow from the reported findings; and

4. The analysis of single station markets (Section III of Levin's Appendix) is carried out within a model which neglects to account for the more important factors determining the program mix of stations, and hence whatever associations it shows cannot be interpreted meaningfully.

II. LEVIN'S MEASURE OF PROGRAM DIVERSITY

Any assessment of Levin's empirical study must begin with the underlying program diversity measure. In essence, the measure he chose reflects the number of different program "types" available to viewers in a given market; that is, the index reflects diversity *across* program types. The fact that Professor Levin recognizes that his measure is deficient (p. 38) does not, of course, overcome its serious flaws.

First and foremost, the measure fails to take account of how extensively viewer preferences are being met. In the absence of such information, there is no reason to believe that Levin's diversity index does in fact correspond with *consumer satisfying* diversity. In a discussion of this aspect at the latest meeting of the

American Economic Association, where Professor Levin's main findings were reported, Professors H. Barnett and E. Greenberg pointed out:

> The problem is to define the central variable, "program types." As noted, according to this theory, only variations across program types constitute diversity while variations within program types do not. The program type boundaries must be dictated by consumer preferences.... But, as we illustrate below, the construction of program types and analysis of the industry in ways consistent with the "program types" theory are extraordinarily difficult, with the result that (so far) the theory has not been successfully applied in an empirical study.[2]

The danger of relying upon Levin's classification scheme can be demonstrated with reference to one of the program types, "feature film." Evidence reported by Barnett and Greenberg shows a high degree of variation in viewership of films, suggesting that consumers do not consider movies to be a single program "type."[3] Policy measures recommended on the basis of a study which totally ignores *within*-program diversity, even where it might conceivably be larger than the across-program diversity, must be viewed with extreme caution.

Levin's program diversity index was also sharply questioned by McGowan and Peck. Commenting on Levin's study at the same meeting of the American Economic Association, they noted:

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[2]Edward Greenberg and Harold J. Barnett, "Program Diversity—New Evidence and Old Theories," presented before the American Economic Association, December 1970, p. 7.

[3]*Loc. cit.*

> Thus, it may be a serious error to base any policy decisions on an analysis which uses a measure of diversity that places a zero value on additional choice within standard program types. *A Levin-type diversity index does just that.* (Emphasis added.)[4]

III. LEVIN'S MODEL

Having formulated the program diversity index, Levin proceeds to determine the effect of ownership within a multivariate regression model, recognizing that only within such a framework can one isolate the effect of any single variable on program diversity. Unfortunately, as we will presently show: (a) Levin's inclusion of a market size variable in the model is not supported by accepted theory and probably results in a serious estimation bias of the other included variables; and (b) the model actually employed did not permit Levin to identify the *net* impact, if any, of newspaper ownership status because of specification errors.

There is substantial agreement among economists about the factors expected to influence program diversity. More specifically, following Steiner's original formulation, these variables are the number of stations in the market and the disparity in preferences of the audience in the market.[5] Although Levin apparently

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[4]John J. McGowan and Merton J. Peck, "Television: Old Themes, Current Facts and Future Policy," Discussion of Presented Papers before the American Economic Association, December 1970, p. 9.

[5]Peter O. Steiner, "Program Patterns and Preferences and the Workability of Competition in Radio Broadcasting," *Quarterly Journal of Economics*, Vol. LXVI, No. 2, May 1952, pp. 194-223.

agrees with this view (p. 33), the model he employs does not include either of these variables.

This error of omission is seriously compounded by an error of commission. Professor Levin includes in his model an explanatory variable—market size—which is not based on adequate theory, and which will give rise to biased estimates of the other coefficients.

Levin's rationale for including a market size variable is astonishing: "Presumably the larger stations in the larger market, with more advertiser income, are on that count better able to sustain unprofitable news and public affairs programming, and hence to contribute to diversity as conceived here" (p. 40). The suggestion that diversity in larger markets is due to broadcasters' willingness and *ability* to sustain unprofitable programs violates expected behavioral patterns and must be viewed with considerable skepticism. Furthermore, Levin nowhere shows that the greater diversity in larger markets is in fact a reflection of a larger number of news and public affairs programming. Indeed, given Levin's index of diversity, there is no way of telling whether the greater diversity is a result of more "educational" programs or of the other thirteen "entertainment" programs (p. 35).

Especially sharp criticism of Levin's market size variable comes from McGowan and Peck. Commenting on Levin's findings they noted:

> Our suspicions of bias are raised by Levin's variable, X_3, defined as net weekly circulation (NWC) divided by commercial station quarter hours. While Levin indicates that this variable was chosen over alternative measures because it gave a better fit to the data, he provides no explanation of why market size itself should be a determinant

of the extent of diversity. Nor is the role of market size evident from the original Steiner formulation of the problem. Steiner's analysis emphasized the *distribution* of viewer preferences, not the absolute magnitude of potential audiences. Whatever the rationale for including a market size variable, we suggest the measure used should be chosen on the grounds of its suitability as a proxy measure for the hypothesized effect and not on goodness of fit criteria.[6]

McGowan and Peck's concern with Levin's market size variable is not a mere theoretical issue. Since the market size variable is likely to be correlated with the number of TV-homes in the market, they add, "Our suspicion then is that the variable X_3 is absorbing some of the effect of additional broadcasting on diversity."[7] In other words, some of the coefficients obtained by Levin are most likely biased. These biases will be discussed below.

Levin understands well that a serious attempt to establish the net impact of newspaper ownership on program diversity can only be undertaken within a model which *simultaneously* isolates the effects of all other explanatory variables, and in describing his approach he claims: "We have also utilized more sophisticated techniques to isolate out the relative impact of newspaper ownership and other relevant factors in explaining the range of choice and diversity" (p. 10). Unfortunately, as we will now show, this promise is not fulfilled in the study presented to the Commission.

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[6] McGowan and Peck, *op. cit.*, pp. 6-7.

[7] *Ibid.*, p. 7.

The explanatory variables for program diversity are listed in Table 3 (p. 39). They are:

X_3 = ARB net weekly circulation in market, divided by number of quarter-hour program units broadcast by all commercial stations therein

X_4 = number of quarter-hour program units broadcast by commercial stations

X_5 = number of quarter-hour program units broadcast by ETV stations

X_6 = number of quarter-hour units broadcast by independent stations

X_7 = number of quarter-hour units broadcast by network affiliates or stations

X_8 = number of quarter-hour units broadcast by single-owned stations

X_9 = number of quarter-hour units broadcast by group-owned stations

X_{10} = number of quarter-hour units broadcast by newspaper-owned stations

X_{11} = number of quarter-hour units broadcast by non-newspaper stations

Setting aside the market size variable (X_3) whose deficiencies were noted earlier, one infers from Levin's selection of variables that program diversity will also depend on whether the station is commercial or educational, network affiliated or independent, group- or single-owned and, finally, newspaper- or non-newspaper-owned. Yet, none of the equations reported by Levin in either Table 4 or 5 contains simultaneous estimates of all these variables. A quick examination of Levin's regression results will show that he was unable to estimate coefficients for more than one pair of

variables at a time. (See, for example, Equations 1, 2, 7 in Table 4 and Equations 4, 6 in Table 5.) The inability to obtain meaningful estimates of *all* variables specified by Levin's hypothesis is, we suspect, a result of faulty model specification. Since $X_4 + X_5 = X_6 + X_7 = X_8 + X_9$, a data matrix containing more than one of these variable pairs is singular, rendering meaningful estimates of all variables impossible.

As a consequence of this Levin was not in fact able to properly test his model. Consider, for example, Equation 6, Table 5, from which Professor Levin deduces that non-newspaper-owned stations have greater impact on program diversity. Yet, the specification he employs does not permit him to ascertain whether the effect of newspaper ownership is not a result of another ownership pattern, namely, of whether the station is single- or group-owned. Similarly, the effect attributed to newspaper ownership status in Equations 3 and 7 of Table 4, may, in fact, be a result of whether the station is independent or network affiliated, single- or group-owned.

IV. INTERPRETING LEVIN'S STATISTICAL FINDINGS

So far we have been concerned with Levin's analytical framework. We will now show that the results he obtained are: (a) biased, and (b) do not support the conclusions drawn from them.

McGowan and Peck demonstrate convincingly that Levin's market size variable, criticized earlier in detail, biases downwards other coefficients in the same model. In particular, it probably underestimates the true contribution to program diversity brought about by

additional commercial broadcasting hours. The existence of the bias is argued as follows:

> Thus we suspect Levin underestimates the impact of commercial broadcasting relative to ETV broadcasting on effective viewing options.
>
> These suspicions are heightened upon further examination of his estimates. As noted, they imply an average degree of duplication among commercial stations in excess of 40 percent regardless of whether the stations are network affiliates or independents. Though there is admittedly a trend toward increasing frequency of deletion or delay of network programs, affiliates still rely predominantly on network programs during prime time. One would expect then that the degree of duplication among affiliates would closely parallel the degree of duplication among network schedules. Yet, using program categories similar to Levin's the extent of duplication in prime time network programming is much closer to twenty than forty per cent. Indeed, Levin's estimates of average number of options per program unit reported in his Table 3 indicate 1.74 in a two station market and 2.40 in a three station market. Implied in these estimates is an average rate of duplication of (2.00-1.74)/2.00 = .13 in two station markets and of (3.00-2.40)/3.00 = .20 in three station markets.
>
> These calculations suggest to us that the 'true' value of the marginal impact on diversity of additional commercial, particularly affiliated station, quarter hours may be substantially larger than Levin estimates and may, in fact, be quite

similar to the magnitude he finds for ETV broadcasting.[8]

Let us now consider the evidence cited by Levin for his major conclusion that newspaper-owned stations do not enhance program diversity as much as non-newspaper-owned stations (Equations 4 and 7 in Table 4 and Equation 4 in Table 5). In explaining these results, Professor Levin says, "In Table 5, Equation 4, e.g., other things equal, commercial choices rise by about 62 for every 100 units broadcast by group *or* single owners. Whereas an added 100 units from newspaper- and non-newspaper-owned stations will yield 61 and 64 choices, respectively (a statistically significant difference)" (p. 49). This statement is in error. All other things are not held constant in the derivation of the estimates. In Equation 4, Table 5, the only variable which is controlled is market size; variables X_8 and X_9, whether the station is single- or group-owned, are not taken into account. But most astonishing is the statement that the difference between the effects of newspaper and non-newspaper ownership of the station is statistically significant, a statement which is made without the required probability tests. Since the data for performing the necessary test are not provided in Levin's statement, we could not evaluate his assertion.[9] However, a simple evaluation of the reported results indicates that one cannot reject the hypothesis that

[8] *Ibid.*, pp. 7-8.

[9] The hypothesis that the *difference* between two regression coefficients is insignificant (H_0: $b_1 - b_2 = 0$) can only be evaluated on the basis of a comparison of the residual sum of squares under it and under the alternative hypothesis ($b_1 - b_2 \neq 0$). See N. R. Draper and H. Smith, *Applied Regression Analysis* (New York: Wiley & Sons, 1967), Section 2.10.

newspaper-owned stations have the same effect on program diversity as non-newspaper-owned stations. That is, one cannot reasonably reject the hypothesis that the X_{10} coefficient in Equation 4, Table 5, came from a distribution with a mean value equal to the coefficient of X_{11} ($H_0 = b_{10} = b_{11} = .6402$; $ab_{11} = .0393$). Given such an underlying distribution and independence of variables, a difference as great as that reported between newspaper- and non-newspaper-owned stations would be observed with a frequency of about forty-eight times in a hundred.

V. THE ANALYSIS OF SINGLE STATION MARKETS

In the last section Levin seeks to determine whether newspaper ownership affects the extent of local originations and the frequency of news, and of instructional and public affairs programs.

The analysis is carried out with the aid of a two-day classification of stations and programs (Table 6). Even though the results cited by Levin for single markets are not distinctly adverse to newspaper-owned stations,[10] the framework employed must be rejected because it ignores entirely the most important determinants of a station's program mix. For example, earlier in the statement (p. 40), Levin argues that the larger stations are more able to carry the unprofitable news and public affairs programming; yet in the analysis of Table 6 no account is taken of this factor.

[10] "As for news, instructional, and public affairs, with one exception the pattern seems similar. In one-station markets, statistically comparable numbers of news programs are carried by network affiliated Vs and Us without newspaper ties" (p. 52).

Similarly, other factors known to influence the station's decision regarding program mix—the demographic and economic characteristics of the market—are neither mentioned nor introduced into the analysis. The same issues can be raised with respect to frequency of local originations. Obviously, any attempt to isolate the impact of newspaper ownership on the number of local originations can only be made within a model which simultaneously takes into account the effect of the probably more important economic and marketing factors. A properly designed study must distinguish between live and automated originations. Since local originations obviously depend both on the revenue potential of the program and production costs, the simplistic two-variate association presented by Levin must be dismissed as totally inadequate for policy guidelines.

APPENDIX

PROFESSIONAL RESUME OF DR. M. MARCUS

Dr. Marcus holds a B.A. degree from Brooklyn College (1959), and a Ph.D. degree in Economics from Brown University (1963). He is a special consultant with NERA, and a member of the faculty of the Department of Economics at Rutgers University where he teaches courses in economic theory and industrial organization.

Dr. Marcus has conducted research into various aspects of industry performance and behavior. His articles appear in various scholarly journals including *Land Economics, The Review of Economics and Statistics, The Southern Economic Journal* and *The Canadian Journal of Economics.*

[APPENDIX C: Addendum 1 to UR-150-A; Reply Comments in Relation to FCC Docket 18110 (June 10, 1971) (prepared by A Division of Resource Management Corporation)]

INTRODUCTION

This paper is prepared in response to Dr. James N. Roose's[1] recent memorandum questioning the methodological underpinnings of the earlier RMC Report UR-150, "A Quantitative Analysis of the RMC Effects of Joint Mass Communication Media Ownership" prepared by RMC under contract with the National Association of Broadcasters. In developing these reply comments we are animated by the desire to clarify the main differences

[1] James N. Roose "Credible and Incredible Economic Evidence Reply Comments in FCC Docket 18110." Memorandum No. 109, Stanford University Research Center in Economic Growth, Stanford, California, April 1971.

between our approach and the earlier Stanford University Research Center in Economic Growth Memorandum,[2] which was presented as evidence with regard to the Federal Communications Commission Docket 18110.

Before immersing ourselves in the rebuttal of Dr. Roose's comments, it is worthwhile to review the study objectives RMC set out to accomplish. These objectives included the conducting of an empirical investigation of the factors influencing price behavior of the mass communications media, but mainly the study was concerned with examining whether jointly owned mass media exhibited a different price behavior than mass media not under joint ownership.

Specifically the study was designed to investigate the issues raised by the earlier Roose, Owen and Grey paper[1], which developed communication media price behavior equations characterized by the absence of any audience/circulation variables among the exogenous variables, based on an alleged endogeneity of audience size. The fact that contrary to common sense, no audience size measure – either current or lagged – appeared in their reduced-term equations led RMC, Inc. to undertake the research proposed by the National Association of Broadcasters, based on our belief that proper consideration and reflection of the influence of audience size would

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[2]James N. Roose, Bruce M. Owen and David L. Grey, "Economic Issues in the Joint Ownership of Newspaper and Television Media Comments in Response to Further Notice of Proposed Rule Making. Federal Communications Commission Docket 18110" Memorandum No. 97 Stanford University Research Center in Economic Growth, Stanford, California, May 1970.

[1]James N. Roose, Bruce M. Owen and David L. Grey, *op. cit.*

clear up the issue of whether there was a positive differential price behavior associated with joint media ownership.

On the RMC Approach

Basically the RMC research design followed the premise that the reduced-form price behavior equation of a properly specified communication media price determination model would include among the exogenous variables either current or lagged audience size, depending on the investigator's viewpoint on the critical issue of endogeneity of the audience size variable.

The first viewpoint, namely that current circulation size is not endogenous, leads to its inclusion among the independent variables of Owen's reduced-form equations. This procedure was followed and we estimated the Owen equations in their original form and with the inclusion of audience size, showing that the statistical significance of the joint ownership variables found by Dr. Roose and his colleagues diappeared if current circulation size was admitted among the exogenous variables.

The second viewpoint that current circulation is indeed an endogenous variable would have led to different estimation procedures to acknowledge the price-audience size relationship. Originally we had proposed estimating the price behavior equation through the instrumental variable technique, selecting lagged audience/circulation size as the instrumental variable. However, this would have required the development of a special computer program for this task, which the limited study resources would not permit.

In view of the financial limitations of the study, we decided instead to apply another simulataneous equation technique, which has been shown to be almost identical

to an instrumental variable, namely two-stage least squares. Development of a two-stage least squares model requires some consideration of the structure of the price behavior structural equations. However, since data on some important variables that might affect price behavior, such as station programming expenditures are not officially published and since our objective was simply the estimation of the price behavior equation, we decided to develop a simple two equation model to support the two-stage least squares estimation of the price behavior structural equation. It is interesting to note that our formulation of the two-stage least squares model leads to a reduced-form price equation including lagged circulation size among its exogenous variables.

The limited study objectives of the RMC research should be noted. Indeed we did not envision the formulation of a complete set of structural equations of the communications media, mainly because some of the data warranted for such an endeavor are confidential. Our earlier research document acknowledged the fact that some important data items were unavailable, while also stating our conviction that a proper formulation and specification of the model with programming expenditures and other unpublished data would strengthen our results.

With the issues in proper background we will now consider Dr. Roose's criticisms,[1] which are directed against our: i) alledged model misspecification, ii) alledged incorrect estimation methods, and iii) alledged multicollinearity.

[1] James N. Roose, *op. cit.*

Alleged Model Misspecification

The key of the controversy regarding the RMC Report and the earlier Roose-Owen-Grey research is that we argue that a proper specification of the price behavior equation would have led to a reduced-form equation including either current circulation (in case this variable is not accepted as a jointly dependent variable) or lagged circulation variables whenever the joint dependence hypothesis is accepted. There are strong arguments as to why lagged circulation would appear as an exogenous variable in lieu of current circulation even if the joint dependence is not accepted, since fall station advertising rates are based mainly on spring circulation. Thus, Dr. Roose misrepresents our position when he argues that we concentrate on the "entirely improper question of whether or not an endogenous variable belongs in a reduced form equation."[1]

If circulation either of television stations or daily newspapers is not jointly dependent with advertising rates, then it is obvious that a reduced-form price behavior equation would have had to include current or lagged audience/circulation among its exongenous variables. Several reasons can be advanced in support of this proposition; let us start by examining the statistical concept of endogeneity.

In the case of the estimation of a price behavior equation, with prices as dependent variables and circulation among the explanatory variables, prices and circulation are jointly dependent variables whenever the error terms of the equation are correlated with circulation size, thus breaking the classical least-squares assumption that the expectation of error terms and independent

[1] James N. Roose, *op. cit.*, pp. A-41.

variables be zero. Jointly dependent variables in an equation usually occur when the two variables are jointly determined by the same process such as prices and quantities of supply and demand analysis, or consumption and income of national income analysis. In the presence of strong lags in television markets where fall advertising rates are determined on the basis of spring circulation, and where programming decisions take time before they materialize in audience/circulation changes, the process through which advertising rates affect audience is so roundabout that no identification bias will result by adding audience as an exogenous variables to Bruce Owen's reduced-form equations. In any event Dr. Roose and his associates could have no objection to introducing lagged audience/circulation in the reduced-form equation, and this procedure would be somewhat in line with our two-stage least squares procedure.

Our simultaneous equation approach to the price behavior equation was formulated to permit the estimation of a function relating prices to audience/circulation size free of bias in case circulation was assumed to be jointly dependent with advertising rates. In view of our scope and financial limitations, the decision was made to apply a simple two-stage least squares model in which lagged audience/circulation would play a significant part, since this procedure has been shown by Goldberger [1] to be identical with instrumental variable estimation techniques. We did not propose to engage in an exhaustive multi-equation approach in view of the lack of data that would have prevented its estimation.

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[1] Arthur S. Goldberger, *Econometric Theory*, John Wiley & Sons, Inc., New York, 1964, p. 337.

Dr. Roose attacks our two-stage least-squares formulations as ambiguous; he claims that he doesn't know whether they are structural relations or not, or which agent's economic behavior is being modeled or described by each equation.[2] This criticism has not prevented him from expanding our simplified two equation model, conserving a modified version of our price and audience equations. We did not expand our model to avoid the problems involved in gathering data on items such as programming expenditures and amounts of time purchased by national advertisers — data items not officially published.

Recapitulating the discussion, we should note that the crux of the matter remains the acceptability of either current audience/circulation or its lagged value as an exogenous variable to be included in the reduced forms equations. Our two-stage least squares by including lagged audience/circulation amounts to the use of lagged audience as an instrumental variable. If one accepts the view that the relation of advertising rates to joint ownership variables cannot be examined without due consideration of audience/circulation either in its current or lagged values, then the RMC approach holds valid. If one accepts the view of Roose and his colleagues[1] that a reduced form price equation had no reason to consider either current or lagged circulation as exogenous variables, then the RMC approach is no longer valid.

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[2] James N. Roose, *op. cit.* pp. A-38.

[1] James N. Roose, Bruce M. Owen, and Davis L. Grey, *op. cit.*

Alleged Incorrect estimation

The critical comments on the estimation procedures used in the RMC report[2] made by Dr. Roose refer to both the use of ordinary least squares methods in the presence of the audience/circulation size, and to the incorrect standard errors of two-stage least squares.

The RMC ordinary least squares regressions were applied to functions similar to Bruce M. Owen's except for the fact that they included audience/circulation size as exogenous variables, after postulating that audience/circulation size could not be truly classified as endogenous variables. If these variables are accepted as exogenous, then no simultaneous equation bias could result from the application of ordinary least – squares to the data base. If they are endogenous, we admitted that simultaneous equation estimation techniques would have been warranted, as in the development of our two-stage least squares model.

The citicisms of the two-stage least squares procedure are directed against the fact that two-stage least squares estimates are less efficient than ordinary least squares estimates plus the fact that the introduction of two-stage least squares is responsible for the alleged multicollinearity of the RMC results. A careful analysis of changes in the regression of coefficients and their standard errors in response to changes in the estimation procedure from ordinary to two-stage least squares reveals that the changes in standard errors of the regression coefficients have hardly been enough to change the statistical significance of the regression

[2]RMC, Incorporated, *A Quantitative Analysis of the Price Effects of Joint Mass Communication Media Ownership*, RMC Report UR-150, Bethesda, Maryland, March 1971.

coefficients, so that the less efficient estimates associated with two-stage squares are not responsible for any major changes in the study results. That is, they are inconsequential to the study results.

The second argument regarding the multicollinearity introduced by the two-stage least squares ignores the critical role played by the lagged audience/circulation variable as a "quasi-instrumental" variable. These lagged variables dominate the estimation of the predicted values of circulation/audience and furthermore they do not appear in the equation estimates except in this indirect fashion, so that the problem of multicollinearity although present in some instances (i.e., analysis of agency newspapers) is kept within manageable bounds. The next seciton reviews in greater detail those changes on the alleged multicollinearity.

Alleged Multicollinearity

Dr. Roose argues in his rebuttal that both our ordinary least-squares and the two-stage least squares model are subject to multicollinearity. His argument is that both the audience size variable of the ordinary least-squares and its predicted value in the two stage least-squares are correlated with the joint ownership and other explanatory variables and that this multicollinearity is responsible for our results.

Regarding the ordinary least squares model, we noted in our report where multicollinearity obscures the results of the investigation, as for instance the discussion of collinearity between monopoly, duopoly and agency newspapers in the newspaper regressions; this subject was completely glossed over in the Roose-Owen-Grey original submission.[1] Apart from this in-

[1]James N. Roose, Bruce M. Owen and David L. Grey, *op. cit.*

stance multicollinearity is hardly a problem in the RMC ordinary least squares runs.

A crude role of thumb regarding multicollinearity is that whenever the correlation between two independent variables exceeds their correlation with the dependent variable, there is a strong supposition that multicollinearity is present. A look at our correlation matrices (Tables A-1 and A-3 of the RMC Report) reveals that the introduction of the Quarter Hour Audience size variable has hardly affected the pattern of relatively low collinearity in the television data base. Only one variable, the VHF dummy variable, is more correlated with Quarter Hour Audience than with any of the remaining dependent and independent variables. In the Television data base the correlations of the independent variable with the dependent are reasonably close to the highest correlation between any two independent variables, except in the case of network affiliation.

With the exception of the Monopoly, Duopoly and Agency collinearity, the correlation matrix of the newspaper data base also disproves Dr. Roose's[2] multicollinearity contention in the ordinary least squares regressions. Not only are independent variable correlations with circulation relatively close to their correlations with the dependent variable, but also only in the case of the Income variable is an exogenous variable more correlated with circulation than with another exogenous variable. Thus it would appear that multicollinearity poses no major problem except in the analysis of the differential price behavior of agency newspapers.

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[2]James N. Roose, *op. cit.*, pp. A-32 and A-33.

With regard to the two-stage least squares model, Dr. Roose argues that since predicted circulation/audience size is a linear combination of all the other independent variables in the model, its inclusion in the model would have the effect of introducing multicollinearity. In the absence of the correlation of the predicted audience size variable with the other independent variables, the analysis of multicollinearity in the two-stage least squares must focus on changes in the values of the regression coefficients and their respective standard errors, whenever the estimation procedure changes from ordinary to two-stage least squares methods.

In the case of the newspaper regressions, the evidence of multicollinearity from the application of two-stage least squares is negligible. Regression coefficients or their standard errors are hardly altered as a result of changing from ordinary to stage least squares methods, with only the income, monopoly and duopoly variables changing somewhat. The joint ownership and the chain ownership variables remain insignificant regardless of the estimation procedures.

With respect to the television runs, only the VHF and the network affiliate variables change appreciably as a result of applying two-stage least square regressions; no major changes occur in the statistical significance of the other exogenous variables. In view of the relative stability of the regression coefficients and their respective standard errors regardless of the estimation method used, we conclude that multicollinearity poses no insurmountable problems to the interpretation of the results of the RMC study.

Finally, we should add a note of common sense regarding advertising price behavior that reflects the

fact that television advertisers are charged prices according to the viewing audience at different times of the day ane even the week, and that these hourly audience differences explain much of the structure of television rates.[1] It would appear proper that audience/circulation size be explicitly taken into account as exogenous variables either in their current or lagged values when estimating reduced-form price behavior equations.

APPENDIX D

I. BACKGROUND

In the comments submitted by James N. Roose, Bruce M. Owen, and David L. Grey in Docket 18110, it was argued that jointly-owned newspapers and television stations charge significantly higher prices for national advertising. This argument was supported by an econometric study conducted by Dr. Owen.

In one of Dr. Owen's analyses, the effect of joint ownership on prices charged by television stations was investigated. In the analysis, the following variables were in effect held constant by statistical techniques, since they might affect price:

Population
Income
Network Affiliated
VHF Station
Competes with Newspaper-owned Station

[1] See John L. Peterman, "The Structure of National Time in the Television Broadcasting Industry", *The Journal of Law and Economics*, October 1965.

Results from the analysis indicated that, on the average, newspaper-owned stations charge 15% more than other stations. In a similar analysis, it was found that jointly-owned newspapers charge 10% more on the average than other newspapers. The conclusion which Dr. Owen drew from these findings was that jointly-owned newspapers and television stations "charge monopoly prices."

There is more than one possible interpretation of the results from Dr. Owen's study, however. As can be seen from Table I, the audience to the average newspaper-owned television station is larger than the audience to the average non-newspaper-owned station.

	Average quarter-hour audience (prime-time)
Average Newspaper-owned Station	76,000
Average Non-Newspaper-owned Station	57,800

TABLE I

Television Audiences

Although the data in Table I suggested that differences in audience size might be reflected in the differential prices found in Dr. Owen's study, the extent to which this was true could not be determined without additional research. This research was conducted by Resource Management Corporation (RMC) at NAB's request, and was included with NAB's comments in Docket 18110 as Exhibit B.

A part of the RMC project duplicated Dr. Owen's work, and essentially the same results were obtained.

The remainder of the RMC findings indicated, however, that jointly-owned television stations are able to charge higher prices because they obtain larger circulations.

The principal difference, therefore, between the RMC study and the Owen analysis, is that RMC took into account television station audience and newspaper circulation in predicting advertising rates. Owen declined to do so, on the grounds that these audience and circulation variables were endogenous:

> Each equation, estimated by ordinary least squares, is in reduced form; endogenous variables are excluded. In a completely specified reduced form set of equations describing the firm or market in question, circulation or audience size would be an important endogenous variable, and is therefore excluded from all the equations reported below.[1]

According to a leading econometrician, however, the distinction between exogenous variables is not necessarily the important one. In his textbook on econometric theory, Arthur Goldberger points out:

> The variables of the system are classified into endogenous variables and exogenous variables according as the theory is or is not intended to account for their values. . . . For most statistical purposes, however, the relevant distinction is between jointly dependent variables and predetermined

[1] ECONOMIC ISSUES IN THE JOINT OWNERSHIP OF NEWSPAPER AND TELEVISION MEDIA, Studies in the Economics of Mass Communication, Stanford University: Stanford, California, May 1970. P. 5.

> variables. The jointly dependent variables are the current endogenous variables; the predetermined variables are the exogenous variables and the lagged endogenous variables. A lagged exogenous variable should be considered simply as a distinct exogenous variable.[2]

If a *lagged* audience variable is used, therefore, there can be no question about whether such a variable is jointly dependent – it can only be predetermined. In an effort to provide additional information, the NAB staff undertook a modest effort to develop a model of pricing behavior using lagged auidence data. This model is described in the following section.

II. LAGGED AUDIENCE MODEL

The purpose of this effort was to obtain additional empirical evidence concerning the effect of joint ownership on television advertising rates.

In order to cast the hypothesis that, *ceteris paribus*, jointly-owned television stations charge higher prices than other stations into a form in which it could be tested statistically, the following linear model was formulated:

$$y_i = a_o + b_1 x_{1i} + \ldots + b_9 x_{9i} + \epsilon_i$$

where:

y_i = log of highest prime-time Class A hourly rate of station i during 1970

x_{1i} = log of average prime-time quarter-hour audience of station i in Fall of 1968-69 television season

[2] ECONOMETRIC THEORY, John Wiley & Sons, Inc.: New York, 1964. Page 294.

x_{2i} = log of SMSA (or city, as appropriate) population in 1970, in thousands

x_{3i} = dummy variable which takes a value of 1 if the station i was owned by the local daily newspaper during 1970, 0 if not

x_{4i} = SMSA personal per capita income during 1969 in dollars (1970 income data was unavailable as of the time of the study)

x_{5i} = dummy variable which takes a value of 1 if the station i was a VHF station during 1970, 0 if not

x_{6i} = dummy variable which takes a value of 1 if the station i was a network affiliate during 1970, 0 if not

x_{7i} = dummy variable which takes a value of 1 if the station i competed against a local newspaper-owned station in the market during 1970, 0 if not

x_{8i} = dummy variable which takes a value of 1 if the station i owned or was associated with a local radio station during 1970, 0 if not

x_{9i} = dummy variable which takes a value of 1 if the station i had a VHF monopoly during 1970 in its market area, 0 if not

ϵ_i = a random unobserved disturbance

The variable x_{1i} was included in the model to reflect the lagged relationship between audience size and price. It is a predetermined variable, and can properly be included in a reduced form equation.

The model was estimated at least squares from observations on a sample of 503 television stations. Audience data were obtained from the November 1968 local market reports of the American Research Bureau; data compiled by RMC were used for the other variables. The regression coefficients and their standard errors (in parentheses) are listed below:

Intercept	.0449
	(.248)
Log Quarter Hour Audience	.4281
	(.0186)
Log Population	.1772
	(.0140)
Newspaper–Owned	-0.0114
	(.0329)
Log Income	.4902
	(.0325)
VHF	.1191
	(.0374)
Network Affiliate	-0.1034
	(.0540)
Competes with Newspaper-owned Station	.0387
	(.0277)
Radio Owner	.0028
	(.0260)
VHF Monopoly	.0155
	(.0427)
R^2	.90

According to these data, the effect of newspaper ownership of a television station on the rates charged by that station is not significant.* This result is similar to that obtained by RMC, and contradicts the Owen conclusion.

One additional observation about these results is of statistical interest. Table II compares the standard errors of the coefficients in this study with the standard errors obtained in the RMC and Owen analyses. As Table II shows, the standard error on the newspaper ownership variable is largest in the Owen study, and smallest in the regression described in this Appendix. Introducing audience data – particularly lagged audience data – leads, therefore, to more precise estimates of the impact of newspaper ownership on advertising rates, and reinforces the importance of including audience data in the analysis.

*The newspaper-ownership coefficient is, in fact, negative – suggesting that newspaper-owned stations charge lower rates – but is not statistically significantly different from zero.

	Owen	RMC – Ordinary Least Squares	RMC – Two-Stage	NAB
R^2	0.7480	0.8371	0.8619	0.9000
Intercept	-2.1296	-0.4723	0.2185	0.0449
	(.8710)	(.7127)	(.6862)	(.2480)
Log Quarter Hour Audience		0.3124	0.4770	0.4281
		(.0184)	(.0230)	(.0186)
Log Population	0.3843	0.2222	0.1433	0.1772
	(.0136)	(.0146	(.0156)	(.0140)
Newspaper-Owned	0.0760	0.0037	-0.0291	-0.0114
	(.0510)	(.0420)	(.0391)	(.0329)
Log Income	0.6760	0.5307	0.4702	0.4902
	(.1091	(.0886)	(.0853)	(.0325)
VHF	0.5863	0.2323	0.0558	0.1191
	(.0422)	(.0403)	(.0408)	(.0374)
Network Affiliate	0.5576	0.1722	0.0047	-0.1034
	(.0607	(.0541)	(.0530)	(.0540)
Competes with Newspaper-Owned Station	0.0484	0.0252	0.0200	0.0387
	(.0418)	(.0338)	(.0314)	(.0277)
Radio Owner		0.0280	-0.0106	0.0028
		(.0290)	(.0272)	(.0260)
		-0.0612	-0.0159	0.0155
VHF Monopoly		(.0507)	(.0470)	(.0427)

TABLE II

Comparison of Regression Coefficients

Reply Comments of Stephen R. Barnett
[(August 19, 1971), pp. 17-22; 27-40;
73-81; 147-159; 190-194]

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II. THE VALIDITY OF MAXIMUM FEASIBLE DIVERSIFICATION AS A POLICY OBJECTIVE.

"Clearly," as Chairman Burch has noted, "the media cross-ownership matter warranting the most attention is that of VHF-TV and the daily newspaper." Further notice of Proposed Rule Making in Docket No. 18110, 22 F.C.C. 2d 339, concurring and dissenting opinion of Chairman Burch. The Commission has accordingly proposed in Docket No. 18110 to adopt a rule that "would require divestiture, within five years, to reduce holdings in any market to one or more daily newspapers, or one television broadcast station, or one AM-FM combination." *Id.*, par. 34. In Docket No. 18891, meanwhile, the Commission has proposed a complementary rule prohibiting common control within the same market of a daily newspaper and a cable television system. Notice of Proposed Rule Making and of Inquiry in Docket No. 18891, released July 1, 1970, par. 4; see also Memorandum Opinion and Order in Docket No. 18891, released Dec. 8, 1970, par. 5. With respect to both of these newspaper cross-ownership matters, the Commission has rested its rule-making proposal on a policy objective of bringing about the maximum feasible diversification of control of the major communications media in each community. This objective has been challenged here in the comments filed by NAB and ANPA, in some of the supporting

studies commissioned by ANPA, and in the statement of Commissioner Wells dissenting to the issuance of the Further Notice of Proposed Rule Making. The first question to be considered, therefore, is the validity of the policy that the Commission has posited as the basis for the proposed rules.

A. The Policy As Expressed by the Commission in These Proceedings.

We may begin with the Commission's articulation of the policy. The fullest statement thus far in these proceedings is found in the First Report and Order in Docket No. 18110 (18 RR 2d 1735). The Commission there declared:

> . . . [C]entralization of control over the media of mass communications is, like monopolization of economic power, per se undesirable. The power to control what the public hears and sees over the airwaves matters, whatever the degree of self-restraint which may withhold its arbitrary use. [par. 17]
>
> It is accordingly firmly established that in licensing the use of the radio spectrum for broadcasting, we are to be guided by the sound public policy of placing into many, rather than a few hands the control of this powerful medium of mass communication. . . . [par. 18]
>
> . . . . A proper objective is the maximum diversity of ownership that technology permits in each area. We are of the view that 60 different licensees are more desirable than 50, and even that 51 are more desirable than 50. In a rapidly changing social climate, communication of ideas is vital. If a city has 60 frequencies available but they are licensed to

> only 50 different licensees, the number of sources for ideas is not maximized. It might be the 51st licensee that would become the communication channel for a solution to a severe local social crisis. No one can say that present licensees are broadcasting everything worthwhile that can be communicated. We see no existing public interest reason for being wedded to our present policy that permits a licensee to acquire more than one station in the same area. [par. 21]

The Commission recognized the fact, which NAB and ANPA have again stressed here, that "many communities have multiple broadcast and other communications media" (par. 22). But the Commission took note of data submitted by NAB showing that "the number of cities with commercially competing local dailies" had declined by 1968 to only 45 – "a fact which increases the significance of the broadcast medium" (par. 22) – and it reiterated:

> In our view, as we have made clear above, there is no optimum degree of diversification, and we do not feel competent to say or hold that any particular number of outlets of expression is "enough." We believe that the increased amount of broadcast service now available also forms the basis for the conclusion that, with the exceptions mentioned later herein, it is no longer necessary to permit the licensing of combined operations in the same market, as was the case in the early days of broadcasting, in order to bring service to the public. [par. 22]

Also pressed upon the Commission there, as here, was the "equitable" argument based on the Commission's past licensing practices:

> It is urged that the Commission not only permitted but encouraged AM licensees to become TV licensees in their own area, . . . [and] that it is inequitable now not to permit such common ownership for it robs such owners of the fruits of their risk taking . . . . [*Ibid.*]

To which the Commission gave the simple response: "But conditions have changed, and we are obligated to change the priority of our objectives, in the public interest." *Ibid.*[1]

It is true that the Commission subsequently reconsidered and softened the "one-to-a-market" rule adopted in the First Report and Order. See Memorandum Opinion and Order in Docket No. 18110, released March 2, 1971. But in this subsequent decision the Commission not only adhered to the rule prohibiting new combinations between VHF television stations and radio stations in the same market (par. 35), but again rejected the challenges made – by NAB, among others – to the basic diversification policy as expounded in the First Report and Order. See, *e.g.*, pars. 7, 10, 18 of the Memorandum Opinion and Order on reconsideration. Thus the Commission declared (par. 20): "What we stated in . . . the First Report and Order expresses our views on the basis

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[1] *Cf.* the Commission's ruling dated May 12, 1971, on the fairness doctrine complaint involving advertisements for the F-310 gasoline additive, where the Commission announced a broad reappraisal of a policy formulated "more than two decades ago," on the basis that "the evolution of broadcasting and communications generally has been profound during this time-span" (p. 10).

and purpose of the new rules and takes into account the factors mentioned by NAB — factors which do not lessen our concern about diversity."

The objective of maximum feasible diversification was also the basis of the Commission's action in the Second Report and Order in Docket No. 18397 (19 RR 2d 1775). The Commission there adopted rules prohibiting cross-ownership between a television broadcast station and a CATV system in the same market (and between a national television network and a CATV system anywhere) and requiring divestiture to comply with the rule within three years. The Commission justified the TV-CATV rule on the basis that it "would further the Commission's policy favoring diversity of control over local communications media" (par. 12), and noted that "what is at stake is diversity to the CATV subscribing portion of the public . . . ." (par. 13). (In this ruling, as in the First Report and Order in Docket No. 18110, the Commission rejected the contention "that case-by-case consideration of alleged abuses would be preferable to general rules . . . ." (*id.*, par. 5).)

Finally, the Commission has also relied on its diversification policy in the Further Notice of Proposed Rule Making in Docket No. 18110 (22 F.C.C. 2d 339). In proposing the rule that would prohibit cross-ownership of daily newspapers and VHF television stations (or AM-FM combinations) in the same market and would require divestiture to comply with the rule within five years, the Commission said it was acting "for the purpose of promoting competition among the mass media involved, and maximizing diversification of service sources and viewpoints" (par. 33). The Commission stated:

> We have long been concerned with the particular problem of newspaper-broadcast joint control as an important factor in the overall attempt to secure diversity in the control of broadcast facilities. It has now become clear that the most significant aspect of the problem is the common control of television stations and newspapers of general circulation. For, the studies presented in this record and otherwise available are in full agreement that the public looks primarily to these two sources for its news and information on public affairs. . . . [par. 26.]

The Commission added that, "[a]s the authorities cited in paragraph 16 of the First Report and Order . . . demonstrate, control of the sources of information and views on public issues is significant even though there may be an absence of any definitive measurement of the degree to which mass communications actually influence thought and behavior." Par. 26, n. 6. The Commission went on to note, as evidence of the need for the proposed rule, that "the incidence of common ownership of television stations and newspapers is high" (par. 30). It pointed to Justice Department findings that in 34 of the top 50 markets a single owner controls a television station and at least one daily newspaper (*ibid.*), and to the Commission's own report on newspaper-television joint interests as of November 1969, which "indicates that 94 television stations are affiliated through common ownership with newspapers in the same city" (par. 31). The Commission further noted (par. 30) that such combinations frequently involve common control of a television station and more than one daily newspaper in the same city.

In sum, the rules proposed in these proceedings are based on a long-standing Commission policy which takes

"a proper objective . . . the maximum diversity of ownership that technology permits in each area." Since the Commission has made it clear that economics as well as technology must be considered as limitations on the permissible diversity (see, *e.g., Carroll Broadcasting Co. v. FCC,* 258 F.2d 440 (1958)), the policy objective may be more accurately characterized as the maximum feasible diversity in each area. This is the policy that has been challenged in the comments filed by NAB and ANPA and in some of the statements commissioned in support of those comments.

* * * *

C. Sources of the Diversification Policy.

While NAB characterizes the diversity as "a wholly gratuitous assumption that is not supported by logic, experience or empirical data" (NAB Comments, at 26), and while Commissioner Wells accuses the Commission of "revers[ing] long-standing policy by positing" diversity as a regulatory goal and of concluding "with very little analysis" that maximum diversity is desirable, the policy of seeking to achieve maximum feasible diversity is in fact compelled by the law. Since the papers filed by NAB and ANPA sedulously ignore the applicable legal authorities, it may be helpful to refer to a few of them here.[1]

1. *The Commission's own precedents.* We may start with the position the Commission itself has taken over the years on diversity of control as a goal of its regulatory policy. Examination of the Commission's precedents makes it clear that the policy stated by the Commission

[1] The legal sources of the diversification policy are set forth at greater length in my article, *Cable Television and Media Concentration*, 22 Stanford Law Review 21, 250-260 (1970).

here is the same policy the Commission has consistently drawn from the Communications Act over the past 30 years. Even in 1944, when the Commission decided "not to adopt any general rule with respect to newspaper ownership of radio stations," it simultaneously declared that "All the Commissioners agree to the general principle that diversification of control of such media is desirable." The Commission went on to promise that "it does not intend in granting licenses in the public interest to permit concentration of control in the hands of the few to the exclusion of the many who may be equally well qualified to render such public service as is required of a licensee." Public Notice in Docket No. 6051, Jan. 14, 1944, 9 F.R. 702 (printed as Attachment B to ANPA Legal Memorandum F). The 1944 statement was quoted by the Court of Appeals in 1955 as evidence of the Commission's "general policy of encouraging diverse ownership of all mass media of communication." *Clarksburg Publishing Co. v. FCC,* 225 F.2d 511, 517 & n.19 (D.C. Cir. 1955). The court continued:

> The soundness of these guides to the Commission's licensing function is not open to question. These guides, like the First Amendment, rest "on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public***." . . . This court has strongly supported the Commission's view that diversification is an important component of the public interest. [*Id.* at 518.]

While the Commission in the years since 1944 has adhered to diversification as a policy objective, it has steadily moved away from its initial reliance on ad hoc licensing decisions to implement the policy and has increasingly turned to rulemaking and general policy state-

ments instead. Thus in 1953 the Commission stated, in amending its multiple-ownership rules (which represent, of course, a "structural" rather than an *ad hoc* approach to the diversification objective):

> One of the basic underlying considerations in the enactment of the Communications Act was the desire to effectuate the policy against the monopolization of broadcast facilities and the preservation of our broadcasting system on a free competitive basis. . . . This Commission has consistently adhered to the principle of "diversification" in order to preserve competition. . . . Simply stated, the fundamental purpose of this facet of the multiple-ownership rules is to promote diversification of ownership in order to maximize diversification of program and service viewpoints as well as to prevent any undue concentration of economic power contrary to the public interest.

Amendment of Multiple Ownership Rules, 18 Fed. Reg. 7796, 7797, 9 RR 1563, 1568 (1953). Again in 1965 the Commission, in its Policy Statement on Comparative Broadcast Hearings – another relatively "broad brush" rather than ad hoc approach to diversification – endorsed as a "primary objective" the goal of "a maximum diffusion of control of the media of mass communications." Policy Statement on Comparative Broadcast Hearings, 1 F.C.C. 2d 393, 394, 5 RR 2d 1901, 1908 (1965). While thus espousing the precise goal of "maximum" diversity that NAB, ANPA and Commissioner Wells find gratutious and unjustified today, the Commission in the 1965 policy statement expounded further on that policy goal:

> Diversification of control is a public good in a free society, and is additionally desirable where a government licensing system limits access by the public to the use of radio and television facilities. . . . That radio and television broadcast stations play an important role in providing news and opinion is obvious. That it is important in a free society to prevent a concentration of control of the sources of news and opinion and, particularly, that government should not create such a concentration, is equally apparent, and well established.

1 F.C.C. 2d 393, 394, 5 RR 2d 1901, 1908.[1]

The stance thus taken in the 1965 policy statement was strengthened, so far as its applicability here is concerned, by the Policy Statement on Comparative Hearings Involving Regular Renewal Applicants issued by the Commission in January 1970. 18 RR 2d 1901 (Jan. 15, 1970). To be sure, the Commission there virtually eliminated diversification as an issue in comparative licensing hearings involving regular renewal applicants. But the Commission brought up "our policy of diversification of the media of mass communications" and said: "We do not denigrate in any way the importance of that policy or the logic of its applicability in a comparative hearing involving new applicants." 18 RR 2d at 1907. And the Commission went on to hold, in what *was* a decisive reversal of a position it had taken in the 1944 statement, that the appropriate way to implement the diversification policy with respect to ownership combinations in individual markets was not through ad hoc proceedings but

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[1] The Commission relied on these court decisions: *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945); *United States* v. *Storer Broadcasting*, 351 U.S. 192 (1956); *Scripps-Howard Radio, Inc.* v. *FCC*, 189 F. 2d 677 (D.C. Cir.), *cert. denied*, 342 U.S. 830 (1951).

rather through general rule-making. The Commission said: "the overall structure of the industry, so far as multiple-ownership and diversification are concerned, should be the subject of general rule making proceedings rather than ad hoc decisions in renewal hearings." *Id.* at 1907-08. And as the exemplars of this preferred approach, the Commission cited the instant rule-making proceedings. *Id.* at 1907.

The Commission has indeed been moving in recent years, through the instant proceedings, to promote its diversification policy through rule-making. In the original Notice of Proposed Rule Making in Docket No. 18110, issued more than three years ago on March 27, 1968, the Commission, in proposing the "one-to-a-market" rule, again invoked its policy objective of "maximum" diversity:

> One of the purposes of the Commission's multiple ownership rules is to promote maximum diversification of programming sources and viewpoints. It is well established that "[t]he widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. . . ." [Notice of Proposed Rule Making, Docket No. 18110, 33 Fed. Reg. 5315 (1968).]

The Commission has proceeded in the First Report and Order in that docket (18 RR 2d 1735), as related earlier, to adopt the rule prohibiting the formation of new radio-television combinations in the same market. Meanwhile, in the Second Report and Order in Docket No. 18397 (19 RR 2d 1775), the Commission has adopted a rule requiring the break-up within three years of combinations between television stations and cable systems within the same market, likewise in order to "further the

Commission's policy favoring diversity of control over local mass communications media" (par. 12). Finally, in the proposals here at issue, the Commission has returned to "the particular problem of newspaper-broadcast joint control as an important factor in the overall attempt to secure diversity in the control of broadcast facilities," and has recognized that "the most significant aspect of the problem is the common control of television stations and newspapers of general circulation." Further Notice of Proposed Rule Making in Docket No. 18110, 22 F.C.C. 2d 339 (par. 26). In the words of Chairman Burch, "Here then are the guts of the matter."

The instant rule-making proposals thus emerge from a background of more than 25 years in which the Commission has consistently professed adherence to the goal of media diversification, and of several years in which the Commission has espoused and partially implemented a policy of pursuing that objective through general rule-making rather than ad hoc licensing proceedings. Given that background, it is difficult to see how the Commission could seriously entertain at this date the NAB-ANPA position that the diversity objective is fundamentally spurious. It is no less difficult to see – as will be further explained below – how the Commission at this date could responsibly entertain the NAB-ANPA position that the objective of diversification, if it is to be pursued at all, should be pursued through ad hoc listening rather than through general rule-making proceedings.

2. *The decisions of the courts.* The position taken by the Commission itself over the years is not the only refutation of the NAB-ANPA attack on media diversity as a policy objective. One might point, for example, to the view of such a distinguished commentator as Professor Louis L. Jaffe, who has declared, even while support-

ing a cause championed by NAB, that "The objective of diversifying the media is absolutely sound . . . ." Jaffe, *We Need the Pastore Bill,* The New Republic, Dec. 6, 1969, at 14, 15. But there is an even more authoritative source. While it would be difficult to glean the fact from the papers filed here by NAB and ANPA, the diversification policy has frequently been the subject of decisions by the courts. The Supreme Court has declared that Congress in adopting the Communications Act "moved under the spur of a widespread fear that in the absence of governmental control the public interest might be subordinated to monopolistic domination in the broadcasting field." *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 137 (1940), quoted in *Red Lion Broadcasting Co.* v. FCC, 395 U.S. 367, 395 (1969). Even more significant, perhaps, is what the Supreme Court has said concerning the impact of another source of the diversification policy, the First Amendment. In its 1945 decision in the *Associated Press* case, the Court articulated a First Amendment principle which it has often repeated since and which the Commission has often relied on, though it is religiously ignored here by NAB and ANPA. The Court said of the First Amendment:

> That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society. [*Associated Press v. United States,* 326 U.S. 1, 20 (1945), quoted in, *e.g., Citizen Publishing Co. v. United States,* 394 U.S. 131, 139-40 (1969).] [1]

[1] See also the similar declaration by Judge Learned Hand in his trial-court opinion in the *Associated Press* case, stating that the

[footnote continued]

In the original notice of rule making in this very proceeding, the Commission itself, as already noted, has relied on the "well established" doctrine of the *Associated Press* case as a basis for its policy of promoting "maximum diversification of programing sources and viewpoints." Notice of Proposed Rule Making, Docket No. 18110, 33 Fed. Reg. 5315 (1968) quoted at page 31 *supra.*[2]

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newspaper industry—and the same is true, of course, of the broadcast industry—

> . . . serves one of the most vital of all general interests: the dissemination of news from as many different sources, and with as many different facets and colors as is possible. That interest is closely akin to, if indeed it is not the same as, the interest protected by the First Amendment; it presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all.

52 F. Supp. 363, 272 (S.D. N.Y. 1943). Judge Hand's statement has often been quoted with approval by the Supreme Court. *E.g., Tinker* v. *Des Moines* School District, 393 U.S. 503, 512 (1969); *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 270 (1964).

[2] The statement by Mr. Justice Black in the *Associated Press* case is quoted in the opening paragraph of the recent report of Canada's Special Senate Committee on Mass Media. The Report continues:

> This notion is basic to our idea of a free society. The more separate voices we have telling us what's going on, telling us how we're doing, telling us how we *should* be doing, the more effectively we can govern ourselves. In this sense, the mass media are society's suggestion box. The more suggestions there are from below, the better will be the decisions to be made at the top. This assumption is not limited to parliamentary democracies. The desire to have a voice in ordering the institutions that govern our lives is a universal human constant, from classroom to corporation, from neighborhood to empire. And in a technological society, the media are one of the chief instruments by which this need is met.

"The Uncertain Mirror," Report of the Special Senate Committee on Mass Media, Vol. I (1970), at 3.

The pronouncements in the *Associated Press* case provide an illuminating comparison with the positions taken here by the opponents of the proposed rules. While neither the Supreme Court nor Judge Hand used the word "maximum" to characterize the media diversity that is the objective of the First Amendment, the Court spoke of "the *widest possible* dissemination of information from diverse and antagonistic sources," and Judge Hand of "the dissemination of news from *as many different sources*, and with *as many different facets and colors as is possible.*" (emphasis added). See page 34 note 1 supra. If that is not square support for the Commission's stated objective of "maximum diversification of programing sources and viewpoints," it is difficult to imagine what would be. In short, the objective is squarely supported by both the Communications Act and the First Amendment, and this fact has been consistently recognized by both the Commission and the Supreme Court.

Other judicial decisions are in accord. In *Red Lion* the Supreme Court declared,

> It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee.

Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 391 (1969). The Court accordingly rejected the claim of broadcast licensees to monopolize the "scarce resource" (367 U.S. at 391) of a broadcast frequency as against the obligations imposed by the Commission's Fairness Doctrine – obligations which in the Court's view "enhance rather than abridge the freedoms of speech and press

protected by the First Amendment." *Id.* at 375. If the First Amendment freedoms are thus enhanced by application of the Fairness Doctrine to prevent monopolization of even a single radio or television channel, they will be at least as strongly promoted by application of the rules proposed here to prevent common control of *two* of the chief communications channels – a daily newspaper on the one hand and a television station or cable system on the other – in the community. Further support for this conclusion is found in the final footnote to the *Red Lion* opinion. The Court there went out of its way to suggest, though it did not decide, that

> . . . quite apart from scarcity of frequencies, technological or economic, Congress does not abridge freedom of speech or press by legislation directly or indirectly multiplying the voices and views presented to the public through time sharing, fairness doctrines, or other devices which limit or dissipate the power of those who sit astride the channels of communication with the general public. [395 U.S. at 401 n. 28.]

The Court thereupon cited *Citizen Publishing Co. v. United States*, 394 U.S. 131 (1969), where it had declared that restraints eliminating competition between two daily newspapers in the same city "comport neither with the antitrust laws nor with the First Amendment." *Id.* at 139. Applying these considerations to the media facilities involved in the present rule-making proposals, one finds that (1) television stations (and AM-FM combinations as well) are still affected by a "technological scarcity" of frequencies, as the Court expressly held in *Red Lion* (395 U.S. at 396-400), and by an economic scarcity as well; (2) daily newspapers are affected by an economic scarcity, as indicated by their monopoly posi-

tion in almost all markets and as recognized by Congress itself in recent legislation to be discussed below; and (3) cable systems, with their likely monopoly position in their market, are characterized by a compelling scarcity of both an economic and a regulatory nature. The Commission's present proposals to prohibit newspaper-television and newspaper-cable combinations in the same market are thus perfect examples of governmental measures designed, in the words of the Supreme Court in *Red Lion*, to "limit or dissipate the power of those who sit astride the channels of communication with the general public."

Other judicial decisions likewise support the Commission's policy of promoting "maximum diversification" of the major media within each area. In 1951 the Court of Appeals, in sustaining the Commission's decision in a comparative licensing proceeding against the applicant who owned a daily newspaper in the same city, did so on the basis of the *Associated Press* principle favoring "the widest possible dissemination of information from diverse and antagonistic sources." After quoting the Supreme Court's statement, the Court of Appeals continued:

> While uttered in a different context, this thought is the key to the present question. Inherent in the thought is the realization that news communicated to the public is subject to selection and, through selection, to editing, and that in addition there may be diversity in method, manner and emphasis of presentation. Such variations may arise from numerous causes. In considering the public interest the Commission is well within the law when, in choosing between two applications, it attaches significance to the fact that one, in contrast with the other, is dissociated from existing media of mass communication in the area affected.

Scripps-Howard Radio, Inc. v. FCC, 189 F. 2d 677, 683 (D.C. Cir. 1951); see also *McClatchy Broadcasting Co. v. FCC*, 239 F. 2d 15, 18 (D.C. Cir. 1956). The present proceedings, of course, also present "a different context," that of rule-making proposals. But the basic policy objective of maximum diversification of control among the major media voices in a market, and among the daily newspapers and television stations in particular, is the same objective that was upheld by the Court of Appeals in the *Scripps-Howard* and *McClatchy* cases.[1] It is the same objective that was endorsed in *Clarksburg Publishing Co. v. FCC*, 225 F.2d 511 (D.C. Cir. 1955), where the court, again quoting *Associated Press*, pointed out that "This court has strongly supported the Commission's view that diversification is an important component of the public interest." *Id.* at 518. It is the same objective that the court more recently endorsed with the declaration that "The public welfare requires the Commission to provide the 'widest possible dissemination of

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[1] The *Scripps-Howard* case arose from Cleveland and involved only an AM license. It is noteworthy that if one simply counted the media voices in Cleveland—the kind of approach on which NAB relies so heavily here and which it claims to be a new revelation (see NAB Comments, at 16-19, and the NAB-commissioned Seiden study, "Mass Communications in the United States—1970, Summary Volume")—one could count quite a few. As the Court of Appeals stated, there were then "located in Cleveland five AM broadcast stations as well as two daily newspapers and a large number of other publications with which [the newspaper owning applicant] had no connection. . . ." 189 F. 2d at 683. Nonetheless, the Commission applied its diversification policy to deny the license to the newspaper owner, and the Court of Appeals upheld this. (It is also noteworthy, and typical, that while Cleveland then had three daily newspaper publishers, it now has only two.)

information from diverse and antagonistic sources' and to guard against undue concentration of control of communications power'." *Joseph v. FCC*, 404 F.2d 207, 211 (D.C. Cir. 1968). In sum, it is an objective which, far from being the "wholly gratuitous" and "false" proposition that NAB asserts it to be (NAB Comments, at 26, 39), stands firmly on judicial authority.

Fresh support for the diversity objective and new confirmation of its constitutional underpinnings is found in three recent decisions of the courts of appeals. In *National Association of Theatre Owners v. FCC*, 17 RR 2d 2010 (D.C. Cir. 1969), the court significantly extended the theory of the *Associated Press* and *Red Lion* opinions. It did this by suggesting that the Commission is not only permitted, but compelled, to take action to promote the objectives of the First Amendment by broadening the range of diversity among the major communications media. As the court put it, "the Commission *must* seek to assure that the listening and viewing public will be exposed to a wide variety of 'social, political, esthetic, moral, and other ideas and experiences'," so as to "provide the broadcasting media with the diversity *demanded* by the First Amendment. . . ." *Id.* at 2027-28 (emphasis added). Even more recently, the Court of Appeals for the Second Circuit has upheld the Commission's "prime time access" rule in part on the same basis. After quoting *Associated Press* and *Red Lion*, the court declared:

> When viewed in the light of these principles, the prime time access rule, far from violating the First Amendment, appears to be a reasonable step toward fulfillment of its fundamental precepts, for it is the stated purpose of that rule to encourage the "[d]iversity of programs and development of diverse and antagonistic sources of program service" and to correct a situation where "[o]nly three organizations control access to the crucial prime time evening television schedule."

Mt. Mansfield Television, Inc. v. FCC, United States Court of Appeals for the Second Circuit, decided May 3, 1971, slip opinion at 2785. Finally, there is the highly pertinent decision in *Hale v. FCC*, 425 F.2d 556 (D.C. Cir. 1970), which will be dealt with at greater length elsewhere in these comments. It may be noted here that the concurring opinion of Judge Tamm again recognizes the impact of the First Amendment – and of the antitrust laws as well – in compelling application of the Commission's diversification policy to concentrations of control involving newspaper-broadcast combinations at the local level, inasmuch as "concentration in control of the mass media is certainly an issue of paramount importance, touching on fundamental national policies." 425 F.2d at 560-62, 564, 566.

In sum, the Commission's long-held policy of promoting the maximum feasible diversification of media control within particular markets is far from being a "false" and "gratuitous" proposition as asserted by NAB. It is solidly rooted in the Communications Act and the First Amendment, and its validity has been consistently confirmed by both the Commission and the courts.[1]

* * *

[1] It follows, of course, that there is no merit to the argument (see, *e.g.*, ANPA Comments, at 27-32; ANPA Professional Studies, at C-35) that the rules proposed in these proceedings would violate the First Amendment. See, *e.g.*, *Associated Press* v. *United States*, 326 U.S. 1, 20 (1969); *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 375, 386-401 (1969); *National Ass'n of Theatre Owners* v. *FCC*, 17 RR 2d 2010, 2027-2028 (1969).

IV. THE ALTERNATIVE OF DEALING WITH ALLEGED UNDUE CONCENTRATION THROUGH AD HOC LICENSING DECISIONS INSTEAD OF RULE MAKING.

ANPA and its consultants have argued, and NAB appears to agree, that the Commission should not adopt the proposed rules because it can better deal with the issues of media concentration through the "ad hoc" approach of individual licensing proceedings. Thus ANPA devotes an entire argument to the proposition that "The Commission's Asserted Objectives of Promoting Diversification of Viewpoints and Economic Competition in Local Markets Can Best Be Achieved on an Ad Hoc Basis." ANPA Comments, at 54, 54-58. As ANPA sees it,

> the primary defect of the Commission's proposed rule is its failure to take into account the variable and often unique conditions prevailing in individual local markets. No two broadcast or newspaper markets in the United States are identical. Each market has its own distinct geographical, social, and economic characteristics, and any attempt by the Commission to fashion a rule of general applicability in an area so peculiarly dependent on the facts of each situation is fore-doomed to failure. [*Id.* at 54.]

ANPA asserts that up to now "the Commission has vigorously applied its diversification policy in individual licensing proceedings involving newspaper applicants," and that "by recognizing the unique characteristics prevailing in each local market, the flexible procedures previously followed by the Commission have been ideally designed to serve the public interest." *Id.* at 55-56. Professor Udell likewise states, "I wholeheartedly agree with the Commission's historic policy of treating the question of

whether or not a television station should be owned by a local newspaper on a case-by-case basis." ANPA Professional Studies, at D-29. "What is socially desirable will depend upon the specific factors of each situation. Therefore, an individual analysis is required," Professor Udell adds. *Id.* at D-32. ANPA makes the same argument in Docket No. 18891:

> A rule of general applicability is plainly an inappropriate response to the problem of undue concentration of control of the media of mass communication. As the Commission has consistently recognized, the question of undue concentration can only be resolved on a case-by-case basis which takes into account differences in local conditions. [ANPA Comments in Docket No. 18891, at 19.]

Such a case-by-case approach, at least with respect to newspaper-CATV combinations, apparently has the support of at least one member of the Commission. Commissioner Robert E. Lee stated in his dissent from the Notice in Docket No. 18891: "I believe that such matters are better considered on a case-by-case basis and we should not consider barring a class of owners, such as newspapers, from CATV ownership in the same city."

An ad hoc approach to local media concentration may sound attractive in the abstract. The way it would work in practice may be less pleasing, for both the Commission and the affected licensees. In this part of these comments I propose to examine in some detail the ad hoc alternative, in an effort to see how it would work and what implications it would have for the Commission's licensing function. It is necessary to distinguish at the outset, however, between two types of issues involving local media concentration that may be presented to the Commission. One is the issue of *undue concentration*

per se; the other is the issue of *abuses* of media concentration. So far as the second issue is concerned, an ad hoc approach to "alleged abuses resulting from newspaper ownership" has been supported by ANPA (ANPA Comments, at 56) and also by Commissioner Wells. In his dissent to the First Report and Order in Docket No. 18110, Commissioner Wells stated:

> . . . [W]e have an ample arsenal of regulatory powers to deal with abuses as they arise. We hesitate to use these powers to fashion specific remedies for specific abuses, however, choosing instead to adopt a blanket rule. I had assumed that we have been given considerable discretion in regulating the industry so that we could meet such abuses on a case-by-case basis. [18 RR 2d at 1762.]

The desirability of an ad hoc approach to alleged abuses of concentration will be considered in Part V of these comments (along with the question whether there is any evidence that such abuses exist). But undue concentration per se is a different issue, and it is necessary to consider separately the suitability of the ad hoc approach for dealing with it. That is what I propose to do now.

A. Must the Commission Consider "Undue Concentration Per Se" in the Absence of Alleged Abuses?

First, however, the question arises whether there really are two separate issues – whether there really is an issue of "undue concentration per se" that the Commission would have to determine through ad hoc adjudications, even in the absence of alleged abuses, if it failed to adopt the proposed rules. Commissioner Wells apparently takes the view that there is not. The thrust of his dissent in Docket No. 18110, quoted above, appears to be that the Commission should not concern itself with media combinations that are permitted by the existing multiple-ownership rules except in cases where "specific abuses" are alleged. This is also the position of Professor Udell (ANPA Professional Studies, at D-29, D-40), and it is doubtless the preferred position of ANPA itself (see, *e.g.*, ANPA Comments, at 9). It may also be the position of NAB, although NAB apparently does not concede that the Commission should concern itself with local media concentration even through the case-by-case approach and even when specific abuses are alleged.

But the question is not an open one. The Commission has long recognized, as have the courts, that undue concentration is an essential issue even though the combination in question does not offend the existing ownership rules and even though no specific abuses are alleged. This is what the Commission unanimously said in the 1944 Notice, relied on by NAB and ANPA, in which it terminated the early inquiry into newspaper ownership of radio stations. See ANPA Legal Memoranda, Memorandum F, Attachment B. The Commission said it "does not intend in granting licenses in the public interest to permit concentration of control in the hands of the few to the exclusion of the many . . . ." (*ibid.*); it did not say it would avoid "concentration of control in the hands of the few . . ." only in cases where such concentration was shown to have produced specific abuses.[1]

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[1] The majority of the Commission was merely reiterating this position when, in the First Report and Order in Docket No. 18110, it based the decision to prohibit television-radio combinations in the same market on the considerations that

> . . . [C]centralization of control over the media of mass communications is, like monopolization of economic power, per se undesirable. The power to control what the public hears and sees over the airwaves matters, whatever the degree of self-restraint which may withhold its arbitrary use.

[footnote continued]

The Commission's duty to consider the issue of undue concentration per se would seem to be established by Section 309(e) of the Communications Act and the applicable Commission regulations. Section 73.636 (a)(2) of the regulations provides that no license for a television station will be granted

> . . . if the grant of such license would result in a concentration of control of television broadcasting in a manner inconsistent with the public interest, convenience, or necessity. In determining whether there is such a concentration of control, consideration will be given to the facts of each case with particular reference to such factors as the size, extent and location of area served, the number of people served, and the extent of other competitive service to the area in question. Only then does the regulation go on to state that the Commission "will in any event consider that there would be such a concentration of control" if the grant would be inconsistent with the multiple-ownership rules. 47 C.F.R. Sec. 73.636 (a) (2). The text of the regulation is thus inconsistent with the claim that the issue of undue concentration is automatically out

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> . . . . [T]he governing consideration here is power, and power can be realistically tempered on a structural basis. It is therefore no answer to the problem to insist upon a finding of some specific improper conduct or practice. The effects of joint ownership are likely in any event to be so intangible as not to be susceptible of precise definition. The law is clear that specific findings of improper harmful conduct are not a necessary element in Commission action in this area, and that remedial action need not await the feared result. [18 RR 2d at 1740, 1741 (pars. 17, 20).]

See also Second Report and Order in Docket No. 18397, 19 RR 2d 1775, 1777 (par. 5).

> of the case if there is no conflict with the ownership rules and no allegation of specific abuse.[1]

That the Commission must concern itself with undue concentration per se, and that it will have to do so on a case-by-case basis if it abandons the proposed rules, is shown also by the fact that the Commission *has* been doing so. Even during the pendency of these rule-making proceedings, which the Commission has relied on as a justification for not pursuing the ad hoc approach as vigorously as it otherwise might, the Commission has felt compelled to order a number of hearings – apart from comparative hearings – into alleged undue concentration unaccompanied by allegations of specific abuses.[1] In one case involving a renewal application – for the only television station in Cheyenne, Wyoming, whose licensee also controls the daily newspapers, an AM and FM, and the CATV system in Cheyenne – the Commission has ordered such a hearing. *Frontier Broadcasting Co.*, 21 F.C.C. 2d 570 (1970). It has done so on

[1] Of course, the regulation provides for dealing on an ad hoc basis with undue concentration that does not offend the existing multiple-ownership rules. The issue here, however, is whether the existing rules should be expanded–whether they should reach, in particular, newspaper-television combinations in the same market. In examining that issue the question is posed whether rule making or adjudication is the better approach for dealing with such combinations. In examining *that* question it is important to recognize that, whichever approach is chosen, the combinations must be dealt with in terms of "undue concentration per se" and not merely in terms of alleged abuses. The regulation establishes this.

[1] ANPA appears to concede that the Commission must undertake inquiries in such cases and may not limit itself to cases of alleged abuses: "As the Commission has consistently recognized, the question of undue concentration can only be resolved on a case-by-case basis which takes into account differences in local conditions." ANPA Comments in Docket No. 18891, at 19.

transfer applications involving control of an FM station by a daily newspaper publisher in Chicago, *Gale Broadcasting Co.*, 15 RR 2d 337, 341 (1969); of an AM station by the local newspaper publisher in Smyrna, Georgia, *Jonquil Broadcasting Co.*, 18 RR 2d 243, 19 RR 2d 131 (1970)[2]; and a VHF station in Wichita-Hutchinson, Kansas, by a regional media combination. *Wichita-Hutchinson Co.*, 17 RR 2d 192 (1969). The Commission reportedly was also prepared to order such a hearing on a transfer application for control of a VHF station by the local newspaper publisher in Beaumont, Texas. See Memorandum of the Department of Justice in Opposition to the Application for Transfer by Beaumont Broadcasting Corp., File No. BTC-5553 (May 8, 1968); see *Broadcasting*, Aug. 12, 1968, at 61. The Commission has also designated for hearing on the issue of undue concentration at least three uncontested applications for construction permits. It did so on an application for a new FM station filed by the local newspaper publisher in Middlesboro, Kentucky. *Cumberland Gap Broadcasting Co.* (FCC April 8, 1969).[3] In two other cases where it did so, the Commission explicitly recognized its duty to deal with the issue of undue concentration per se. In denying reconsideration of its hearing order on the uncontested application by the local newspaper publisher for a new FM station in Billings, Montana, the Commission declared:

> Contrary to Lee's claim, the Commission's ownership rules . . . do not constitute a blanket authorization for any party to acquire the maximum number of broadcast holdings in the type of situation before us where the problem of possible undue control results, at least in part, from ownership of non-broadcast media.

[2]The examiner's initial decision has disapproved the transfer. 22 RR 2d 441 (1971).

[3]The initial decision approved the application. 24 F.C.C. 2d 393 (1970).

Lee Enterprises, Inc., 16 RR 904, 905 (1969).[1] In similarly denying reconsideration of its hearings order on the uncontested application by the local newspaper publisher for a new FM station in Fort Smith, Arkansas, the Commission said:

> . . . [W]e must also point out that whether or not the Commission has generally specified local concentration of control issues on its own motion is entirely irrelevant, inasmuch as we have a responsibility under the law to specify such an issue whenever the facts warrant it, regardless of whether a petition to deny has been filed.

American Television Co., 12 F.C.C. 2d 518, 521 (1968).[2]

The Commission's duty to apply the policy against undue concentration aside from the application of the multiple-ownership rules, and aside from allegations of specific abuses, has also been recognized by the courts. The Supreme Court said as much in its dictum in the *RCA* case.[3] And the Court of Appeals so held as long

[1]The initial decision approved the application. *Broadcasting*, April 20, 1970, at 41.

[2]See also *Elyria-Lorain Broadcasting Co.*, 6 RR 2d 191 (1965) (initial decision approving transfer at 5 F.C.C. 2d 231 (1966)); *Huntingdon Broadcasters, Inc.*, 6 RR 2d 428 (1965) (initial decision approving application at 5 F.C.C 2d 246 (1966)); *Miami Broadcasting Co.*, 1 RR 2d 43 (1963).

[3]"Moreover, in a given case the Commission might find that antitrust considerations alone would keep the statutory standard

[footnote continued]

ago as 1955 in *Clarksburg Publishing Co. v. FCC*, 225 F.2d 511 (D.C. Cir. 1955). The Commission there had granted a construction permit for a new television station in Clarksburg, West Virginia, to a company which, while it did not own the newspaper in Clarksburg, owned a number of other newspapers and broadcast stations in that part of West Virginia. The Court of Appeals set aside the Commission's action on the ground, among others, of undue concentration per se:

> . . . [I]t is difficult to understand how the Commission could have concluded that the grant would not result "in an unlawful concentration of control or in a monopoly of the media for mass communications in the West Virginia area." . . .
>
> Nothing in the present protest record dispels the strong impression that, on the concentration of control issue alone, the grant would not be in the public interest. . . . [225 F.2d at 519.]

More recently, the Court of Appeals set aside the Commission's original grant of the transfer application for the Chicago FM station because of its failure to hold a hearing or make a finding on the issue of undue concentration. *Joseph v. FCC*, 404 F.2d 207, 212 (D.C. Cir. 1968). And in *Hale v. FCC* the court, while affirming – out of deference to this rule-making proceeding – the Commission's refusal to order a hearing on the renewal application for station KSL-AM in Salt Lake City, made very clear its view that the concentration alleged to exist in Salt Lake City, even though it did not violate the

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from being met, as when the publisher of the sole newspaper in an area applies for a license for the only available radio and television facilities, which, if granted, would give him a monopoly of that area's major media of mass communications." *United States* v. *RCA*, 358 U.S. 334, 351-52 (1959) (dictum).

multiple-ownership rules and even though it had not attracted substantial allegations of specific abuses, was nonetheless a proper and indeed necessary subject for the Commission's consideration and action. See 425 F.2d 556, 560.

The law is clear, then, that the Commission must consider, as part of the "public interest" determination required by Section 309 (a) of the Communications Act, whether the renewal of a television license held by the publisher of the daily newspaper in the same city will result in an undue concentration of media control. And this consideration may not be limited, as Commissioner Wells suggests, to cases involving allegations of specific abuses on the part of the media combination. The question here is whether the Commission should deal with the issue through a rule-making approach, such as the proposed rule that would lead to the dissolution of newspaper-television combinations in all markets (absent an ad hoc showing that a particular combination should be allowed to continue), or through the ad hoc licensing approach urged by ANPA. I shall now examine some of the implications and consequences that could be expected to result from a decision to abandon the proposed rules and pursue the ad hoc approach instead.

* * *

VI. THE IMPACT OF LOCAL-NEWSPAPER OWNERSHIP ON BROADCAST EDITORIALIZING

Affiliation with a local newspaper also appears to deter broadcast stations from editorializing. This is not an "abuse," since the Commission does not (and probably should not) require stations to editorialize. But it is inconsistent with the policy espoused by the Commission and endorsed by the Court of Appeals, which is to en-

courage editorializing. And it deprives the public in many cities of the benefits to be derived from having the affected TV stations, and radio stations as well, add their important voices to the diversity of public debate.

I am aware of no definitive data showing the percentages of broadcast stations that regularly editorialize as between stations owned by local newspapers and stations not so owned. Strong evidence, however, points to the conclusion that the percentage of the latter group is larger. Litwin inquired into the subject and, on the basis of his interviews with owners, managers, and top professional staff of 30 broadcast stations and newspapers (see Further Notice in Docket No. 18110, par. 25), found significant differences between singly-owned and commonly-owned media in responses to a multi-part question on editorializing. See Litwin Study at 5-10; *id.*, Appendix C, at 3. On controversies involving "political questions, candidates," 64 percent of the personnel from singly-owned media reported taking editorial stands as against 47 percent from the commonly-owned media; on "violence," the percentages were 59 and 50; on "obscenity," 60 and 43; and "on smoking," the difference is striking: 52% of single ownership personnel report taking a stand on smoking versus 17% of common ownership personnel" Id. at 511.[1] These results are

[1] Litwin's two categories do not isolate the newspaper-ownership question, since he defined "common ownership" as including multiple-broadcast as well as newspaper-broadcast combinations. But the separation of TV-radio as well as newspaper-broadcast combinations is at issue in this proceeding, and in any event it seems likely, as will be seen, that the same considerations tending to discourage editorializing would operate with respect to both kinds of combinations. It is also true that this is one of the factual questions on which Litwin probably would have done better, as the

[footnote continued]

in accord with evidence that stations affiliated with a local newspaper may refrain from editorializing precisely because of that affiliation and a desire to protect it from criticism. Litwin found such a motive operating in "Big Town" (Baltimore) on the part of the TV and radio stations owned by the "Foot Corporation" (which is evidently Hearst, owner of a newspaper-AM-FM-TV combination in Baltimore). He reports that "[t]he TV and radio stations do not editorialize because, first, they don't feel it is their role to make judgments on public issues, and second, they want to avoid any talk of 'collusion' in the policies of the broadcast and print operations." Litwin Study, at 7-4.[1] Reliance on non-editorializing as a shield against "talk of collusion" or

Commission has pointed out, to consult documentary sources such as the station log rather than rely on interview responses. See First Report and Order, par. 37; Memorandum Opinion and Order on reconsideration, par. 25. The question as to editorializing, however, is one to which the interviewees could be expected to provide reliable answers. Not only is it something they would know, but, more important, it is something as to which the pro-station bias built into the interview sample (see *id.*, par. 25) would probably not be operative. The latter inference is confirmed by the results showing greater editorializing by single owners, a tendency that Litwin was then compelled to attack as "a potentially dangerous situation" (Litwin Study, at 5-11). See First Report and Order, par. 40; Barnett, 22 Stan. L. Rev. at 267 n. 252.

[1] Of course, not all stations under local-newspaper ownership have policies against editorializing. In Baltimore itself Litwin reports that the stations licensed to the "Head Corporation" (the Baltimore Sun) do editorialize. He adds:

> There is no sharing of editorial policy between the newspaper and the TV or radio stations, but usually their policies and stands agree ("Given the same set of facts it's not surprising that rational men reach the same conclusions.") Occasionally, they take different and opposing stands on public issues; for instance, recommendations on referendum issues. [*Id* at 7-4].

other attacks on newspaper ownership was also apparent in the *WHDH* case. As the Commission there stated:

> Although conceding that it has never editorialized, WHDH contends that this is a factor which minimizes any question of concentration of control flowing from the common ownership of newspaper and broadcast interests. We disagree with this contention. . . . [*WHDH, Inc.*, 15 RR 2d 411, 427 (1969).]

If broadcast stations owned by local newspapers are indeed less likely to editorialize than stations not so owned, their reluctance is understandable. One of the effects of such cross-ownership is, precisely, to create a danger in editorializing. The danger is real. As the Court of Appeals pointed out in the *WHDH* case, "It can readily be discerned that aggressive editorializing by WHDH would have provided its rivals with ammunition." *Greater Boston Television Corp. v. FCC*, 20 RR 2d 2052, 2076 (D.C. Cir. 1970). In the specification order for the hearing that was never held in the *WCCO* case, the Commission specified an issue as to "Whether the editorial and commentary treatment of public affairs by WCCO and WCCO-TV has been the same or substantially similar to that of other media with which the stations are directly or indirectly affiliated." *Midwest Radio-Television, Inc.*, 17 F.C.C. 2d 290, 292 (1969). The same issue was specified in the *Chronicle* case (17 F.C.C. 2d 245, 247), but the upshot was a demonstration of the protection a newspaper-affiliated station can indeed gain from refusing to editorialize. The hearing examiner found: "Neither the TV nor the FM station made a practice of editorializing during the last license renewal period. Hence, no findings can be formulated as to any correlation between their editorial positions and those of

other Chronicle-related outlets." 21 RR 2d 245, 253. In sum, stations owned by local newspapers have an interest in not editorializing, and there is good reason to believe they tend to act accordingly.

The question remains whether this is an effect the Commission should consider contrary to the public interest and hence a reason for adopting the rules here proposed. In the pending comparative proceeding over the license for newspaper-owned WTAR-TV in Norfolk, the Review Board in 1970 rejected the challenger's request for addition of a separate issue on the incumbent licensee's "alleged failure to editorialize," on the ground that ". . . Commission policy does not impose a duty upon the licensee to editorialize on its station . . . ." *WTAR Radio-TV Corp.*, 19 RR 2d 661, 682 (1970). It is true that the Commission imposes no such duty, and the Board's refusal to add the editorializing issue may have been correct. Yet it may also be true that the Commission's policy – and *public* policy, as embodied in the Communications Act and the First Amendment – favors editorializing and stands opposed to structural arrangements that inherently discourage it. Even in the 1949 report on *Editorializing by Broadcast Licensees*, where it first approved editorializing, the Commission appeared to be not merely neutral but favorably inclined toward the practice:

> The Commission is not persuaded that a station's willingness to stand up and be counted on these particular issues upon which the licensee has a definite position may not be actually helpful in providing and maintaining a climate of fairness and equal opportunity for the expression of contrary views. Certainly the public has less to fear from the open partisan than from the covert propagandist. . . . [13 F.C.C. 1246, 1254 (1949).]

Over the past twenty-two years editorializing has grown steadily, to the point where editorials are now broadcast, at least occasionally, by nearly 50 percent of AM and TV stations.[1] The Commission, meanwhile, has been confirmed in its approval of the practice and now flatly encourages it:

"The Commission encourages broadcasters to editorialize on issues of interest to their communities subject, however, to the requirements of the fairness doctrine." *National Ass'n of Theater Owners of Indiana*, 19 RR 2d 799, 800 (1970); see also *Obligations of Broadcast Licensees Under the Fairness Doctrine*, Docket No. 18859, May 18, 1970, pars. 7, 8.[1]

In the *WHDH* case, moreover, both the Commission and the Court of Appeals indicated that a policy against editorializing on the part of a newspaper-owned station will be counted against it in a comparative proceeding. It will have this effect, the opinions indicate, not only in the sense of failing to blunt the diversification issue, but also as an affirmative demerit on that issue.[2] Thus the Commission declared:

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[1] According to a survey by Broadcasting Yearbook, the percentages in 1970 were 48.8% of AM stations, 49.9% of TV stations, and 34.8% of FM's, *1971 Broadcasting Yearbook*, at 66. (The source gives the TV percentage as 25.9%, but this is obviously a misprint, as the figures are 180 stations editorializing out of 361 responding, and the source itself describes the result as "nearly 50%." *Ibid*. For 1969 the comparable results were 48.5% of AM's, 48.8% of TV's, and 36.5% of FM's, *1970 Broadcasting Yearbook*, at 22.)

[1] The Commission's approval is shared on Capitol Hill. "Senator Jacob Javits (R-N.Y.) urged broadcasters last week to editorialize more and 'continue to be bold and as muckraking as you wish to be'." *Broadcasting*, July 26, 1971, at 40.

[2] This is not necessarily inconsistent with the Review Board's refusal to add a separate issue on the alleged failure to editorialize

[footnote continued]

> Although conceding that it has never editorialized, WHDH contends that this is a factor which minimizes any question of concentration of control flowing from the common ownership of newspaper and broadcast interests. We disagree with this contention. Licensees have an obligation to devote a reasonable amount of their broadcast time to the presentation of programs on controversial issues of public importance to their communities. Editorializing by Broadcasting Licensees, [citation omitted]. *If anything, the failure to editorialize demonstrates the wisdom of the Commission's policy in favor of a maximum diffusion of control of the media of mass communications. [WHDH, Inc.*, 15 RR 2d 411, 427 (1969) (emphasis added).]

The Court of Appeals, in affirming, expressed its own view that there is a public interest in broadcast editorializing. Further, the court held that failure to editorialize is a ground on which a newspaper-owned license applicant may be "penalized" in a comparative proceeding:

> The Commission need not be confined to the technique of exercising regulatory surveillance to assure that licensees will discharge duties imposed on them, perhaps grudgingly and perhaps to the

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in the *WTAR* case. 19 RR 2d at 682-83. The Review Board stipulated that this and other rulings did "not encompass a determination of whether such matters are relevant to the comparative issue in this proceeding." *Id*. at 685 n. 39. Also, the Review Board excluded from that proceeding a diversification issue such as was involved in the *WHDH* case (see *id*. at 669-74), a ruling that was based on the *Policy Statement on Comparative Hearings Involving Regular Renewal Applicants* and that must now be reversed in the light of *Citizens Communications Center* v. *FCC*, 22 RR 2d 2001 (D.C. Cir. 1971).

minimum required. It may also seek in the public interest to certify as licensees those who would speak out with fresh voice, would most naturally initiate, encourage and expand diversity of approach and viewpoint.

Further, as the Commission pointed out, its concept of the public interest contemplated initiating of editorials by licensees. This embraces selection of topics for probing, and emphasis given to topics, as well as fairness in presentation of views on each topic. There is a public interest in diversity in policy areas lit by the lantern of editorial probes, and for that matter by reportorial assignments and coverage.

WHDH complained it was wrongfully penalized for failure to editorialize. And it can readily be discerned that aggressive editorializing by WHDH would have provided its rivals with ammunition. This does not undermine the Commission's opinion; it rather underlines the inherent difficulty confronting the affiliate of a newspaper, at least one seeking a new license. [*Greater Boston Television Corp. v. FCC*, 20 RR 2d 2052, 2076 (D.C. Cir. 1970).]

Thus, the Commission's "concept of the public interest contemplate(s) initiating of editorials by licensees"; the Commission has approved the practice since 1949 and now affirmatively encourages it; and the Court of Appeals agrees that "[t] there is a public interest in diversity in policy areas lit by the lantern of editorial probes . . . ." And surely this is right. The public's First Amendment interest in "the widest possible dissemination of information from diverse and antagonistic voices"

is curtailed when broadcast stations, and especially TV stations with their enormous audiences, withhold their own voices from the public debate. The editorial views of broadcast stations are likely to be responsible and carefully considered; and the development of newspaper monopoly in almost all cities has considerably increased the need for editorial expressions by the other important media outlets in the community. Moreover, under the fairness doctrine broadcast editorials create the opportunity for responsible spokesmen to express opposing views over the station's facilities, and thus make a uniquely effective contribution to the "marketplace of ideas." See *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969). In response to the *Red Lion* decision, the Commission has proposed to extend the fairness doctrine by requiring licensees to make an affirmative effort to solicit opposing views in response to editorials; the Commission describes its proposal as "a modest further step in promoting access to the broadcast media, and one that is clearly called for in light of the policy of the Act." *Obligations of Broadcast Licensees under the Fairness Doctrine*, May 18, 1970, par. 8; see also pars. 7, 10. The objective there pursued can scarcely be attained if broadcasters refuse to editorialize in the first place.[1] An even more modest "further step in promoting access to the media," and likewise "one that is clearly called for in light of the policy of the Act," would be to terminate ownership structures whose inherent tendency is to deter broadcast editorializing.

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[1] See *Citizens Communications Center* v. *FCC*, 22 RR 2d 2001, 2020 (D.C. Cir. 1971): "Indeed, the failure to promote the full exercise of First Amendment freedoms through the broadcast medium may be a consideration against license renewal."

There is a special reason why the effect of local-newspaper affiliation on a station's willingness to editorialize is harmful to the public, and why it cannot be defended on the basis that the Commission imposes no duty to editorialize. This is because the inhibition operates on an *a priori*, across-the-board basis. It creates in the licensee a private interest in withholding its own opinion regardless of the issue involved, regardless of the strength of the opinion the licensee in fact holds on the issue, and regardless of the licensee's view that it is in the public interest for the opinion to be expressed. The Commission in its 1949 report spoke of the appropriateness of editorializing in cases "where the licensee, himself, believes strongly that one side of a controversial issue is correct and should prevail," and also of "a station's willingness to stand up and be counted on these particular issues upon which the licensee has a definite position. . . ." 13 F.C.C. at 1254. The Commission declared, "[i]t is not a sufficient answer to state that a licensee *should* occupy the position of an impartial umpire, where the licensee is *in fact* partial" (emphasis in original), and added, "[c]ertainly the public has less to fear from the open partisan than from the covert propagandist." *Ibid.* Newspaper affiliation gives the licensee an interest in declining to editorialize, in order to avoid "provid[ing] its rivals with ammunition," even in cases where the licensee "has a definite position," "believes strongly that one side of a controversial issue is correct and should prevail," and is "in fact partial." It thus could well lead to the danger, remarked by the Commission, of the "covert propagandist." More broadly, by deterring the licensee from voicing its opinion in any and all circumstances, it must at times put the licensee in the position of being compelled to subordinate its view of the public

interest to its own private interest in protecting the license against attack. The issue of editorializing thus presents another example of the broad conflict of interest – between a media owner's obligation to the public and his private interest arising from affiliation with another media outlet in the same market – that inevitably attends local cross-media ownership and newspaper-broadcast affiliation in particular.

Nor is the conflict of interest or the harm to the public obviated if the newspaper-affiliated station takes the bolder and apparently less common course and does editorialize freely. On one hand, there is then the danger of "collusion," or at least lack of independence, in the editorial policies of the newspaper and the co-owned station. This is the danger that concerned the Commission in the *WCCO* and *Chronicle* cases when it specified the issue, quoted earlier, of whether "the editorial and commentary treatment of public affairs" by the stations had been "the same or substantially similar" to that of the newspapers (17 F.C.C. 2d at 292; 17 F.C.C. 2d at 247), and also this issue:

> Whether the editorials, news, public affairs, or other programing broadcast by WCCO and WCCO-TV [or KRON-TV and KRON-FM] has been subject in its creation, production or presentation to the review, judgment, control or other influence of other media (or persons associated with them) with which the stations are directly or indirectly affiliated, or of persons with business or ownership relationships to such media. [17 F.C.C. 2d at 292; 17 F.C.C. 2d at 247.]

Given the realities of intracorporate control, it is difficult to see how the Commission or the public could

ever be assured that the editorial policy of a newspaper-owned broadcast station – much less such stations generally – was not "subject in its creation, production or presentation to the review, judgment, control or other influence of . . ." the newspaper publisher or owner. Indeed, given what would seem to be the common understanding of the nature of an editorial – the opinion held by the owner of the media outlet, or at least subject to his control – it would seem inappropriate and quixotic, as well as impossible, to insist that the editorial policies of a newspaper and broadcast station under the same ownership in the same city be formulated in complete independence of each other. One may well be skeptical, and one may guess the Baltimore public would be, of the explanation for generally similar newspaper-broadcast editorial positions given to Litwin by someone at the Baltimore Sun: "Given the same set of facts it's not surprising that rational men reach the same conclusions." Litwin Study, at 7-4. Yet to the extent there is a lack of independence in the newspaper and broadcast editorial policies, the public is not getting the benefit of "diverse and antagonistic" voices as it would if the outlets were separately owned.

At the same time, when the stations editorialize they are likely to feel under pressure to take at least some stands opposed to those of the affiliated newspaper. The newspaper-broadcast owner can then point to these differences in Commission proceedings, as is the custom of the owners of the Washington Post and the WTOP stations (which are publicly called the "Post-Newsweek Stations"). See Comments of the Washington Post Company and Post-Stations, Capital Area, Inc., in Docket No. 18110, May 17, 1971; *Federation of Citizens Associations of D.C.*, 17 RR 2d 1113, 115-16 (1969).

But even if this approach were more typical, it would not answer the problem or remove the conflict of interest. The self-restraint or abstinence of a common owner with respect to the editorial positions voiced by its media on particular issues, or even on all issues – though there is no way for outsiders to know – is no substitute for truly "diverse and antagonistic" voices. See the quotation from Mill's *On Liberty* in *Red Lion Broadcasting Co. v. FCC*, 295 U.S. at 392 n. 18. Beyond that, the common owner will be quite mindful, as will the subordinates authorized to formulate the editorial policies for the affiliated stations, of the need to take some stands opposed to that of the newspaper. The owners of the "Post-Newsweek Stations", would obviously be embarrassed, and whoever sets the day-to-day editorial policy for the stations must know it, if the owners were unable to cite to the Commission substantial examples of differences between the stations and the newspaper. The editorial judgment of the subordinates will thus be based not solely on their view of the public-interest merits of the particular issue, but also on the extraneous consideration of having to differ on some important occasions with the newspaper – a consideration based, of course, on the licensee's private interest in protecting the license. So here again private interest arising from the newspaper-broadcast affiliation intervenes, albeit in a backhand way, to affect the station's performance of its public-interest obligations. In sum, while such affiliation may have any of several impacts on the station's policy with respect to editorializing, it inevitably has some impact, and the impact necessarily impairs the public's interest in having the newspaper and the station represent truly "diverse and antagonistic" voices.

It is true that the newspaper-affiliated station is thus placed in the position, under the ad hoc approach to cross-ownership, of being damned either way. If it does editorialize, it can be attacked for "collusion" or undue similarity with the editorial positions of the newspaper, or perhaps for contrived dissimilarity; if it does not editorialize, it can be attacked in a comparative proceeding for that. But as the Court of Appeals pointed out in the *WHDH* case, this dilemma simply "underlines the inherent difficulty confronting the affiliate of a newspaper . . . ." 20 RR 2d at 2076. What is an "inherent difficulty" for the licensee is, for the public, an inherent feature of local-newspaper ownership which, whatever course the station chooses on the editorializing issue, compromises the public interest in "diverse and antagonistic" voices. The Commission can protect that interest only by removing the ownership structure that necessarily impairs it. It is possible that this result will be achieved on a case-by-case basis through comparative renewal hearings, in view of the recent decision in *Citizens Communications Center v. FCC*, 22 RR 2d 2001 (D.C. Cir. 1971). The Commission may thus find itself compelled, as in the *WHDH* case, to "penalize" newspaper-affiliated renewal applicants for falling on one or the other horn of the editorializing dilemma. It would seem both more effective and more in conformity with the Commission's expressed view of the equities, however, to achieve the result through rule-making action which would carry "proper safeguards, including most importantly an appropriate period for divestment." *"Policy Statement on Comparative Hearings Involving Regular Renewal Applicants*, 18 RR 2d 1901, 1907 (1970).

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C. The Commission's Authority to "Order Divestiture."

Not much need be said about the contention of NAB and ANPA that the "forced divestiture" feature of the proposed rules would itself exceed the Commission's authority. See, *e.g.*, NAB Comments, at 70-78; ANPA Comments (Vol. 1), at 25-27; ANPA Legal Memoranda (Vol. III), Memorandum K. Reliance is placed on cases such as *Gilbertville Trucking Co. v. United States*, 371 U.S. 115 (1962), and *Pan American Airways v. United States*, 371 U.S. 296 (1963). See, *e.g.*, NAB Comments, at 74. As NAB concedes, those cases upheld the power of an administrative agency to "order divestiture." In fact, as NAB does not report, the Supreme Court stated in *Pan American:*

> Likewise, the power to order divestiture need not be explicitly included in the powers of an administrative agency to be part of its arsenal of authority, as we held only the other day in *Gilbertville Trucking Co. v. United States* [371 U.S. at 312 n. 17].

But the entire contention is beside the point. It is based on a different meaning of "ordering divestiture" from that involved here. The cases relied on concerned the authority of an administrative agency to order divestiture on the part of a company engaged in private business but subject to the agency's *continuing regulation.* There is a fundamental difference between that kind of administrative action and what is involved here. At issue here is the exercise of this Commission's authority to make rules specifying the standard of "public interest, convenience, and necessity" that it will apply, in the future, in granting and renewing broadcast licenses – licenses which by stat-

ute shall not be "for a longer term than three years" and shall not "be construed to create any right, beyond the terms, conditions, and period of the license." 47 U.S.C. §§307(d), 301. The question here does not concern, as NAB claims, the Commission's authority "to terminate licenses or require divestiture of licensed facilities . . . ." NAB Comments, at 77. Rather the proposed rules are properly characterized, in the terms used by the Commission to characterize its Chain Broadcasting Regulations (which also required "divestiture"), as "the expression of the general policy we will follow in exercising our licensing power." See *National Broadcasting Co. v. United States,* 319 U.S. 190, 196 (1943). What is at issue is whether the Commission, when it adopts a new rule applicable to its licensing process, is compelled to "grandfather" all existing arrangements inconsistent with that rule. If that is the case, then the Commission's power to make rules "as public convenience, interest, or necessity requires" (47 U.S.C. §303) is seriously and perpetually curtailed. There is nothing in the Act to suggest that the Commission is so hobbled. On the contrary, such a conclusion would be difficult to reconcile with the explicit provisions that broadcast licenses provide for "the use of such channels, but not the ownership thereof," that they are granted "for limited periods of time," and that "no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license." 47 U.S.C. §301.

Nor is the asserted conclusion supported by past practice. As the Commission points out in the Further Notice of Proposed Rule Making (par. 39, n. 9), it has dispensed with grandfathering in the past. In addition to the example there cited, it is noteworthy, as already mentioned, that the Chain Broadcasting Regulations led to the divestiture of a number of radio stations and an entire national network (see *National Broadcasting Co. v. United States,* 319 U.S. at 197, 208, 206-208) as well as to other fundamental changes in network practices – certainly a "restructuring of the industry." Further, the Commission has also dispensed with grandfathering in the rules it recently adopted with respect to TV-CATV combinations in the same market and network ownership of CATV systems anywhere. Second Report and Order in Docket No. 18397, pars. 15-16. This too might fairly be described as the restructuring of an industry, albeit a young one. (In any event, that ruling is a square precedent for the propriety of divestiture with respect to the proposed newspaper-cable rule in Docket No. 18891. See also *Pikes Peak Broadcasting Co. v. FCC,* 15 RR 2d 2063, 2074 (D.C. Cir. 1969).)

If there were any doubt as to the Commission's authority to "order divestiture" in connection with the rules proposed here, it would be removed by recent decisions of the Court of Appeals. In *Joseph v. FCC,* 404 F. 2d 207 (D.C. Cir. 1968), the court was dealing with the subject of media cross-ownership at the local level (though before the Commission's newspaper proposal had entered the picture). And it declared: ". . . of course an agency may change its standards prospectively, though that power is not in derogation of *the duty to change them retrospectively* when that better furthers the overall public interest." 404 F2d at 212 (emphasis added). True, the "retrospective" change to which the court referred would have come about in that case through a transfer hearing rather than a rule-making proceeding; but it scarcely seems likely that the Commission would be without authority to achieve the same "retrospective" result by rule-making, where it can do so without im-

posing forfeitures and with the other public-interest advantages that both it and the Court of Appeals have recently noted. See Policy Statement on Comparative Hearings Involving Regular Renewal Applicants, 18 RR 2d 1901, 1907-08 (1970); *Hale v. FCC*, 425 F.2d 556, 560 (D.C. Cir. 1970).

The *Hale* case is also dispositive here. The court there affirmed the Commission's denial of a license-renewal hearing on allegations of undue media concentration, including a newspaper-broadcast combination, in Salt Lake City. In doing so the court relied on a representation made by the Commission in denying a renewal hearing with respect to yet another newspaper-television combination, this one in Washington, D.C. *Federation of Citizens Association of* the District of Columbia, 17 RR 2d 1113 (1969). The Commission there said, and the court quoted:

> . . . any actions in this area as to a licensee such as this would be appropriate only in the context of overall rule-making proceedings. In this connection we point out the outstanding inquiry on conglomerate ownership and the specific rule-making proceeding, FCC Docket No. 18810. [425 F.2d at 560.]

In relying on these assurances by the Commission based on this very rule-making proceeding, the court could scarcely have contemplated that the Commission would be without authority to make rules affecting the existing media concentrations about which the court expressed its concern. This conclusion is buttressed by the concurring opinion of Judge Tamm, who spoke, for example, of "[t]he risk inherent in allowing these accretions of power to persist unchecked." *Id.* at 562. As the two opinions in the *Hale* case indicate, the Court of Appeals is relying – as is the public – on the Commission's repeated assurances that it will deal with the issue of media concentration through the vehicle of rule-making and in this proceeding. For example, there is the Commission's statement that "the overall structure of the industry, so far as multiple ownership and diversification are concerned, should be the subject of general rule making proceedings rather than ad hoc decisions in renewal hearings." Policy Statement on Comparative Hearings Involving Regular Renewal Applicants, 18 RR 2d 1901, 1907-08 (1970). Such assurances would ring hollow if, as NAB and ANPA contend, rules made in this proceeding could not have an impact on the renewal process and thus could not affect the existing structure of the industry. But the Commission is not so impotent. It has the power and the duty to reach the merits of the policy issues presented in these proceedings.

[Comments of Post-Newsweek Stations,
Capital Area, Inc. (May, 1974), pp. 6-17]

II. COMMON OWNERSHIP OF A NEWSPAPER AND TELEVISION STATION IN THE SAME MARKET DOES NOT PREVENT VIGOROUS COMPETITION IN THE SALE OF BROADCAST ADVERTISING WHICH SATISFIES THE PURPOSES OF THE ANTITRUST LAWS.

In fact, in most broadcast markets there is vigorous competition for broadcast advertising revenues irrespective of any common ownership of a newspaper and television station in the market. In those typical markets there is no possible reason for the Commission to give any weight to economic consequences of cross-ownership.

The typical television station meets competition for the sale of advertising from at least two network television stations and a number of independently owned radio stations. In major markets there are likely to be additional television stations and a multitude of radio stations. It is a rare broadcast market in which any one station has anything approaching a monopoly share of local advertising revenues, and certainly the typical station's share is far short of a monopoly of local, national or total broadcast advertising. In short, insofar as broadcast advertising is concerned, in most markets no antitrust question is presented even if cross-market competition from other media is not considered.

The intense competitiveness of typical broadcast advertising markets is no different where there is newspaper cross-ownership. No one has produced evidence that cross-ownership markets are any less competitive.

Nor is it apparent why they should be less competitive. A newspaper-affiliated station has at least the same incentives to compete for broadcast advertising revenues with the other stations in the market as it would if it were owned by a local bank or department store or any other local business establishment. And it is unlikely that competition in the *bradocast* advertising market will be threatened either by cross-market use of the newspaper's position *in its own market* or by reduced cross-market competition between the newspaper and the television station.

The Newspaper's Market Power.

There is no danger that newspaper affiliation will permit television stations to dominate their markets because of the financial resources of newspapers. The competing broadcast owners in most markets include national networks, national multiple broadcast owners, conglomerates, or other major commercial enterprises. A newspaper-affiliated television station is rarely, if ever, an economic giant among pygmies.

Nor is there any reasonable prospect that a newspaper owner will attempt to exploit its relationship with newspaper advertisers so as to give a commonly owned television station an unfair competitive advantage in the broadcast market. For one thing, the use of forced tie-in arrangements and other predatory commercial practices by which such exploitation might theoretically be accomplished is prohibited by the Sherman Act. Moreover, in the broadcast business, unlike other businesses, such practices would be subject to discovery and discipline by the Commission as well as by the Justice Department. If they were committed, they could lead to a wide array of FCC sanctions including loss of the offending owner's

license. In addition, apart from the gravity of these deterrents, where there is no record of such predatory practices under an existing cross-ownership, there can be no reasonable basis for assuming that they will occur if the cross-ownership continues.

In fact, WTOP-TV and The Washington Post—and we believe many other commonly owned television stations and newspapers as well—maintain wholly separate and autonomous advertising sales operations, with no joint sales rates or sales arrangements. The Commission could appropriately establish a requirement, applicable prospectively as a condition of renewal, that any television station affiliated with a newspaper will thereafter maintain wholly separate advertising sales operations with separate sales personnel and will not join with its affiliated newspaper in any joint selling or any other practices which the Commission may determine to be potentially anti-competitive.

Reduction of Competition Between Newspaper and Television Station.

The Antitrust Division's evident assumption that there is less competition *between* a commonly owned newspaper and a television station than there would be under separate ownership is not substantiated by any evidence of actual practice. In fact, common ownership does not prevent intense competition between the affiliated newspaper and television station. Indeed, in some cases that competition is if anything more aggressive than the competition between the newspaper and separately owned broadcast stations in the same market.

Furthermore, the potential scope for any reduced cross-market competition is quite small, because the portion of available advertising revenues for which newspapers and television stations are close substitutes is quite small. First, for the great bulk of local newspaper advertisers, television is not a realistic alternative. Television is too costly for the small advertiser, too limited for the advertiser who wishes to convey information about numerous items or detailed information about particular items, and too transitory for advertising messages which require reflection. Conversely, newspapers cannot readily serve advertisers whose message depends heavily on visual or oral impact, true-to-life depiction, mood, or timing. Second, those advertisers which do use both media frequently use them as complements rather than as alternatives. Third, there is little direct price competition within particular markets between newspapers and television stations because of the basic incomparability between the time sold by the local television station and the space sold by the local newspaper. For such reasons, the courts which have made findings concerning cross-market elasticities between newspaper and television advertising have concluded that newspaper advertising is a distinct market with relatively little overlap between it and broadcasting. *United States* v. *Citizen Publishing Co.*, 280 F. Supp. 978 (D. Ariz. 1968), *aff'd*, 394 U.S. 131 (1969); *United States* v. *Times Mirror Co.*, 274 F. Supp. 606 (C. D. Cal. 1967); *Bowen* v. *N.Y. News Inc.*, 1973 CCH Trade Cases ¶ 74, 590 (S.D.N.Y. 1973).

The Antitrust Division's Hypothetical Market

In lieu of any showing that broadcast advertising markets are not highly competitive regardless of newspaper

cross-ownership, recent petitions to deny applications for renewal of newspaper-affiliated licensees filed by the Antitrust Division have based their showing of market concentration on a hypothetical market combining local newspaper and broadcast advertising revenues. This approach has the rhetorical advantage of yielding in some instances impressive-looking numbers reflecting the commonly owned newspaper and television stations' share of this artificial market. It should be apparent, however, that the magic of market definition does not change any of the underlying realities.

A hypothetical local newspaper-broadcast advertising market looks heavily concentrated for the simple reason that the local newspaper advertising market, which is necessarily heavily concentrated, accounts for the overwhelming bulk of local newspaper and broadcast advertising revenues.* By combining the large concentrated newspaper market with the small competitive broadcast market, the Antitrust Division attains the appearance of concentration in a newspaper-broadcast market. The fallacy of this approach can be illustrated by the example of a one-newspaper, multi-broadcaster city in which there is no cross-ownership and in which the television and radio stations compete on an equal footing. In such a market, on the Antitrust Division's analysis, the newspaper alone would have something approaching a prima facie monopoly share of the hypothetical local newspaper-broadcast market; but in the real world it is obvious that such a newspaper's supposed "monopoly" gives it no power to control prices for broadcast advertising and has no effect

*A market so defined is also distorted by the failure to include advertising from any other non-broadcast media except newspapers—i.e., from billboards, posters, general circulation magazines, mass direct mailings, and the like.

at all on the competition between the several broadcast stations for such revenues. The same is true where one of the television stations is commonly owned with a newspaper: redefining the market to include the newspaper yields a slightly greater appearance of heavy concentration, but it does not change the fact that there is vigorous competition for broadcast advertising revenues.

The illusion of heavy concentration in broadcast advertising markets fostered by the Antitrust Division essentially results from the composition of newspaper markets, not from any concentration in broadcasting markets or any effects of newspaper-television cross-ownership. The figures developed to show concentration in an artificially drawn market for the sale of local newspaper-broadcast advertising reflect little more than the trend toward one-newspaper or two-newspaper markets as a result of economic conditions in the daily newspaper publishing industry. This is a question to which Congress has already addressed itself in the Newspaper Preservation Act, 15 U.S.C. §§ 1801-04, by providing antitrust exemptions for joint operating agreements among some daily newspapers. As fundamentally a newspaper question, it is not well suited for regulatory solution by the FCC, whose responsibilities center on the public interest in the full and effective use of broadcasting.

III. A LICENSEE'S AFFILIATION WITH A NEWSPAPER IN THE SAME MARKET IS CONSISTENT WITH THE COMMISSION'S DIVERSITY POLICY.

The Commission rightly regards diversity in the sources of news and opinion as an important objective to be served by its licensing policies. We believe that common ownership of a newspaper and a television station in the same market can be fully consistent with this objective,

especially if they maintain entirely separate news and editorial operations. Moreover, in the many markets where there is already a substantial diversity of media voices, still greater diversity is not so transcendent a public interest objective as to require a prophylactic rule against newspaper-television cross-ownership regardless of countervailing public interest considerations.

Diversity of news and opinion sources is important to the public interest under the Communications Act above all because it contributes to an informed electorate. A variety of sources of information and perspectives on public issues makes it more likely that the truth will be discovered and widely understood. Cross-ownership may make that objective less likely to be achieved than under separate ownership (depending on the identity of the separate owner), if the news and editorial operations of the commonly owned stations are intermingled, and if the station does not itself present news and opinion taken from a variety of sources. But separate ownership is much less central than other attributes of prospective licensees in promoting diversity, and in some circumstances it may indeed be counter-productive.

Separate ownership is no guarantee of diversity. As one commentator has noted, "a flick of the radio dial should be sufficient to dispel [the] illusion" that an abundance of separate sources means an abundant variety of information and opinion. Barron, "An Emerging Right Of Access To The Media?" 37 *Geo. Wash. L. Rev.* 487, 498 (1969). Stations which regard news and public affairs programming as no more than routine obligations to be met so as to satisfy the Commission, or as adjuncts to entertainment programming, are likely to sound monotonously similar in their informational programming. They may rely heavily on the networks, the wire

services, and superficial reporting of the news they carry. They may carry relatively few expressions of opinion likely to contribute to public debate or to provoke public response over their facilities. Moreover, the fact that some separate station owners have strong views on public issues does not necessarily mean that they have different views. If two station owners belong to the same local business or financial community, the similarities in their views may be more important than the differences.

As these observations suggest, a station's contribution to the diversity of information and ideas depends principally on the importance it attaches to its information and editorial functions and on the independence of the station's personnel to pursue facts and opinion wherever they may lead. A station that carries a large amount of information, news and public affairs programs contributes more diverse information as well as more total information to the public dialogue than a station which carries limited amounts of such programming in a perfunctory way. A station which presents a large number of editorials and editorial replies as well as a variety of commentators by itself contributes more to the diversity of available opinion than a station which offers little opinion programming. A station which gives its reporters free rein, subject to requirements of responsible reporting, will produce more diverse and informative reporting than a station closely tied to local establishment interests.

These attributes of stations likely to contribute most to diversify are not only more important than separate ownership; they are also more likely to be found in stations owned by newspaper companies than in those owned by many of the prospective alternative separate owners for cross-owned television stations.

Finally, whatever weight might be given to maximizing the total number of separately owned media voices in the consideration of original license applications, such a policy can not be controlling where an incumbent licensee seeks renewal on the strength of an overall record of meritorious service to the public interest. The Commission's consistent policy has been to give controlling weight to such a record in considering renewal applications, and to take into account a host of other comparative considerations in proceedings involving original applications. There is no reason to change that policy now as to stations that are cross-owned. Certainly, there is no reason to change it in major markets where there is already an abundant diversity of media voices, or for cross-owned stations which maintain separate and autonomous news and editorial operations from those of the commonly owned newspaper.

In the typical urbanized area there is no want of whatever diversity separate ownership can provide. A large number of different media owners have access to audiences throughout such markets, over several television stations, literally dozens of radio stations, billboards, mass circulation magazines, and the like. In turn, the audiences have ready access to a nearly countless multitude of competing voices, including numerous special interest magazines, out-of-market newspaper, out-of-market television stations, suburban newspapers, cable television, professional and trade publications, direct mail communications, handbills, and leaflets. In such markets, if common ownership results in one or two fewer separately owned media voices than the theoretical maximum, the effect on the public interest is not substantial.

If existing cross-ownerships are nonetheless thought to present any threat to diversity, the appropriate solution is to require the station to maintain separate and independent news and editorial operations—as has long been the practice of WTOP-TV and The Washington Post. The efficacy of this solution has been implicitly recognized by Congress itself in the Newspaper Preservation Act, where it permitted newspapers in the same market to *eliminate* economic competition between them pursuant to joint operating arrangements on condition "that there is no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined." 15 U.S.C. § 1802(c). This solution was adopted for the express purpose of preserving separate and independent voices in the same market—the very objective sought by the Commission's diversity policy.

The solution adopted for non-competing newspapers should be more effective as applied to commonly owned newspapers and television stations. This is so not only because the cross-owned media are likely to continue to compete with each other, but also because of the panoply of regulatory safeguards of diversity applicable to broadcasters. Newspapers are not subject to any fairness doctrine, they are not bound by any personal attack rules, they are not supervised by any federal regulatory agency, and above all they do not face the prospect of submitting their overall performance to formal scrutiny every few years by a body empowered to take their license away. Broadcasters affiliated with newspapers, who are subject to all these restraints, and who in addition maintain independent news and editorial operations, are

not a threat to diversity. Where they have served the public interest well in the past, the public interest would not be served in the present by a requirement that they be divested.

FURTHER COMMENTS OF NATIONAL CITIZENS COMMITTEE FOR BROADCASTING [May 15, 1974]

National Citizens Committee for Broadcasting (NCCB) hereby files its further comments in the above-captioned proceeding, as a prelude to its appearance at oral argument in this docket.

I. INTEREST OF NCCB.

NCCB is a non-profit membership organization devoted to increasing public awareness of and participation in the regulation of broadcasting and allied communications fields. The Commission is familiar with NCCB's longstanding opposition to concentration of control in the media through its participation in several Commission proceedings on this subject. It has, for example, participated in earlier stages of this proceeding,[1] and has opposed wholesale waiver of the television-cable cross-ownership rules.[2] In fact, in its comments in response to the Commission's 1968 *Notice of Proposed Rule Making* in this docket (33 F.R. 5315), NCCB was one of the first parties, along with the Justice Department, to suggest that the Commission include newspapers in its consideration of cross-ownership and concentration of control of the media.

II. BACKGROUND OF THIS PROCEEDING:

In 1970 the Commission adopted part of the relief NCCB was seeking. It adopted the so-called "one to a

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[1] See *Further Notice of Proposed Rule Making*, Docket 18110, 22 F.C.C. 2d 339, ¶23 (1970).

[2] "Comments of National Citizens Committee for Broadcasting," Docket 18891, filed in response to *Memorandum Opinion and Order* of March 13, 1974.

market" rules prohibiting common ownership of a television station and an AM/FM combination in the same market.[2a] In its *Further Notice, supra,* issued at the same time, the Commission proposed amendment of its rules to proscribe common ownership of a daily newspaper and a TV, AM or FM broadcast station in the same market. This proposal also suggested breaking up common ownership of AM-FM combinations in the same market unless a showing could be made that the stations were technically or economically so interdependent that they could not possibly be operated under separate ownership. The Commission contemplated divestiture, within five years, of commonly owned newspaper-broadcast concerns and AM-FM operations to bring the ownership structure of the broadcasting industry into compliance with the proposed amendments to the rules.

NCCB supports the Commission's proposal to require independent ownership of AM-FM stations. We believe that continuation of AM-FM combinations significantly reduces the diversity of local sources of information—particularly in smaller cities and towns with no television assignments. NCCB believes that adequate evidence already exists to require independent ownership.[3]

We shall, however, direct our attention in these comments primarily to the issue of newspaper-broadcast cross-ownership, which we believe is the most immedi-

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[2a]The original rules would have barred common ownership of an AM and FM station in the same community. This rule was amended in 1971 to allow such combinations, subject to the 50% non-duplication of programming rule.

[3]See, e.g., "Comments of Students' F.C.C. Study Group", filed May 17, 1971, in this proceeding, and "Special Report: The Rites of Passage Are All Over for FM Radio: It's Out On Its Own," *Broadcasting,* Sept. 24, 1973, p. 31.

ately critical aspect of the *Further Notice.* As the Commission itself pointed out in Paragraph 26:

> It has now become clear that the most significant aspect of the problem [of concentration of control] is the common control of television stations and newspapers of general circulation. For, the studies presented in this record and otherwise available are in full agreement that the public looks primarily to these two sources for its news and information on public affairs. Other broadcast services and other printed publications are substantially less significant in this respect.

In footnote to the above, the Commission noted:

> . . . [C]ontrol of the sources of information and views on public issues is significant even though there may be an absence of any definitive measurement of the degree to which mass communications actually influence thought and behavior.

The Commission went on to provide brief documentation of the extent to which the public relied on newspapers and television for its news and opinions. The evidence supports what common sense would dictate: that joint ownership of newspapers and television stations poses serious problems to a society which believes that the "centralization of control over the media of mass communications is, like monopolization of economic power, per se undesirable."[4]

In dealing with the problem of cross-owned newspaper and broadcast interests, it is imperative, for the sake of all concerned parties, that the Commission

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[4]*First Report and Order,* Docket 18110, 22 F.C.C. 2d 306, 310 (1970).

adopt rules specifying a ban on at least certain levels of concentration, and a prima facie threshold assumption of its undue concentration as to others.

The House of Representatives has recently passed legislation which affects procedures and standards for broadcast license renewals.[5] One of the provisions of the bill would require that the Commission not consider cross-ownership in renewal proceedings unless it has first promulgated rules defining its approach to cross-ownership questions. It further requires that the Commission adopt any such rules within six months of the enactment of the legislation. The House Commerce Committee opposes Commission regulation of cross-ownership in what it calls a "haphazard, subjective, and oft-times inconsistent manner"[6] on a case-by-case basis. It also feels that this proceeding should not be delayed any longer.

NCCB does not agree with the House bill to the extent that it might be read to ban considerations on a case-by-case basis of media concentration of control in situations where the Commission has not adopted prophylactic rules totally prohibiting cross or multiple ownership of certain types of facilities. In such a case, individualized examination of cross-ownership situations not totally barred would still be necessary.

NCCB does, however, agree with the House that four years is far too long for this proceeding to have been pending without adoption of rules. Much litigation time and effort has been expended by citizens groups, as well

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[5]H.R. 12993, The Broadcast License Renewal Act, passed in the House May 1, 1974.

[6]House Report No. 93-961, 93d Cong., 2nd Sess. at 19 (1974).

as by broadcasters, on concentration of control issues in cases where divestiture might have been mandated in a rule adopted soon after all comments and replies were originally received by the Commission to the *Further Notice* in August, 1971. The Commission has ample studies and comments before it setting forth the actual and potential adverse effects of cross-ownership and the lack of countervailing benefits from such media concentration of control. The Commission should, therefore, act immediately to adopt rules barring local newspaper-broadcast combinations, either through a flat ban or by setting forth categories of concentrated structures that will be treated either as (a) *per se* having anticompetitive economic efforts and reducing the diversity of local informational sources or (b) raising a presumption of such effects, requiring a hearing to that would take into account certain specified factors.

III. NCCB's PROPOSED RULE:

NCCB would argue that a flat local newspaper-television cross-ownership ban would be justified, not only for the strong First Amendment and economic policy reasons set forth below, but also for reasons of administrative clarity. Nevertheless, recognizing that the Commission may wish to adopt an alternative approach, we urge the Commission to adopt a rule which sets forth both *per se* and *prima facie* levels of local concentration. Such a rule, we believe, is mandated by (1) the evidence before the Commission, (2) the First Amendment, and (3) the Commission's duties under the public interest standard of the Communications Act.

NCCB therefore urges the Commission to adopt a rule modeled on that set forth in the Appendix to these comments, which would:

(a) Impose a flat ban on newspaper-television cross-ownership combinations where a single media owner holds over 30% of the market of total informational sources on local events and issues, and

(b) Raise a presumption of undue concentration, requiring a hearing in which specifically codified factors would be considered, where a single owner holds between 20-30 percent of the market.

Below the 20% market share figure, only substantial factual allegations of actual abuse of concentration of control, which will be still open to F.C.C. consideration under any conceivable proposal in this docket, would be grounds for a hearing at renewal.

This two-part approach is called for if the Commission adopts anything less than an across the board prohibition. Without a flat ban, the Commission must still leave room for consideration of individual market factors. The critical difference from past practice would be that such factors would be clearly spelled out in the Commission's rules. This would solve the basic problem that concerned the House Committee on Interstate and Foreign Commerce and the broadcasters who appeared before it. It would eliminate the potential for "haphazard" case-by-case adjudication by the Commission in this area, and provide clearer standards for review of Commission cross-ownership decision. Such an approach would be consistent with the public's interest in enforcement of the fundamental national policies favoring economic competition and diversity of sources of information, yet would provide the clearer standards to guide their conduct that media owners have been requesting.

For those over 30% of market cases to which the flat ban applies, divestiture within five years should, as outlined in the *Further Notice*, be required. Similarly, divestiture ordered after a hearing on the 20-30% presumption also should be allowed over a five-year period.

New acquisitions of joint newspaper-broadcast holdings should be totally barred by the rules, no matter what the market shares involved. The only rationale for anything less than a flat ban would have to be Commission acceptance of the argument that some past media owners legitimately assumed that acquiring media combinations that attained a concentration level less than that raising a *prima facie* case under our proposed rule was such a minimal restraint on speech and competition in the market place that it would not create a risk of divestiture at some future date. While questionable, such a rationale, even if adopted for the past, could in no way bear on prospective acquisitions.

Such an approach would be consistent with the Justice Department's more restrictive approach to new acquisitions of competitors than to requiring divestiture of existing combinations. The Department's antitrust "market share" guidelines for defining what horizontal mergers would normally be attacked set forth very low threshhold levels of assumed anticompetitive concentration.

For example, in highly concentrated markets, defined as those where the four largest firms have approximately 75% of the market, the Department indicated that it would ordinarily challenge mergers between firms with the following market shares:[7]

[7] All of the figures used herein are taken from Bennett, *Media Concentration and the FCC: Focusing with a Section Seven Lens*, 66 Northwestern U.L. Rev. 159, 171 (1971).

Acquiring firm	Acquired firm
4%	4% or more
10%	2% or more
15% or more	1% or more

Even when the top four firms control less than about 75% of the market, the guidelines call into question mergers between competitors with the following market shares:

Acquiring firm	Acquired firm
5%	5% or more
10%	4% or more
15%	3% or more
20%	2% or more
25%	1% or more

These guidelines provide a convenient benchmark for evaluating specific levels of concentration.

The proposed market share guidelines suggested by NCCB herein for application to newspaper-broadcast cross-ownership are, of course, far less restrictive than those the Justice Department applies to other industries. They are, however, primarily designed to deal with an existing concentrated industry structure calling for divestiture. The low threshold limits for mergers in the Justice Department guidelines would argue for a flat ban, or at least lower *per se* and *prima facie* requirements, as to prospective cross-ownership situations created by acquisition or transfer.

IV. REASONS FOR ADOPTION OF NCCB'S PROPOSED RULE:

A. Cross-Ownership of Sources of Information on Local Issues and Events Represents the Chief Threat to Diverse Expression in Local Communities, and is the Concentration Situation Most Clearly Contrary to the Public Interst Standard.

It is important and feasible for the Commission to fashion its cross-ownership rules in terms of the need for *local* diversity of news sources. While concentration on a national scale poses serious problems,[8] the worst effects of cross-ownership are evident at the local level. Local issues should be reported from a variety of sources to promote the greatest potential for intelligent decision-making by the local electorate.

Local political campaigns, bond issues, highway plans, school administration, and the conduct and standards of local officeholders are just a few of the issues that are of immediate importance in the daily life of a community. To have the two most critical sources of information about these issues—a local television station and a local daily newspaper—commonly owned significantly reduces the chance of robust debate between competing local editorial viewpoints on these issues.

While competing viewpoints on national issues may be of equal significance, the local citizens of any community will be far more likely to receive such views through alternative sources such as national magazines, out of town newspapers such as the New York Times, Wall Street Journal, or National Observer, books, and out

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[8] See *infra*, for discussion of the need for enforcement of the Commission's Top 50 Markets Policy.

of town television and radio stations. While these sources may therefore be relevant in constructing a market for sources of information on national issues, they are not relevant here.[9]

Another disadvantage of mutually-owned newspapers and broadcast facilities in the same market is the potential created for suppression or distortion by one outlet of news adverse to the other medium's interests. Local media are normally themselves the subject of controversy, since their actions and decisions play an important role in shaping local events.[10] If the media are in competitive positions, they will be encouraged to serve as each other's watchdogs.

Competition thus increases the possibility that the media will cover stories about other media, which may be otherwise ignored. Information on newspaper or station strikes, hiring and firing of controversial television and radio personalities, broadcast license challenges, criticism of the media—such stories are important local news, and deserve coverage. But when the local newspapers and television stations are co-owned, there is a risk that such stories will be blacked out because of the conflicts of economic interests that exposure would entail.[11]

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[9] See *infra*, Section V-A.

[10] For example, 44% of those ascertained in one licensee community survey in Columbus, Ohio, found mass media to be the second most pressing problem in the community. See 1970 Application of *RadiOhio, Inc.*, for renewal of WBNS-AM-FM.

[11] For other examples of the dangers of cross-ownership particularly on the local level, see *Times-Herald Printing Co.*, 25 F.C.C. 2d 984, 999-1006 (Johnson, dissenting).

B. Both the First Amendment and the Communications Act Mandate Adoption of a Rule Such as NCCB Has Proposed.

The Commission has both the authority and the obligation to consider diversification of media control as a critical factor in broadcast proceedings. In its *Policy Statement on Comparative Hearings*, 1 F.C.C. 393, 394 (1965), the Commission explicitly stated that "[d]iversification is a factor of primary significance since . . . it constitutes a primary objective in the licensing scheme."

One of the most important regulatory means by which the F.C.C. promotes First Amendment and antitrust objectives is by providing for a diversity of sources of information and a competitive atmosphere in the marketplace of ideas. The need for a rule is thus particularly acute in matters affecting important First Amendment interests.

Indeed, the United States Constitution and the Communications Act of 1934 mandate adoption of a rule such as that proposed in the Appendix as the least restrictive means of furthering the public's First Amendment rights. The public interest, convenience and necessity encompass the basic objectives of the First Amendment; and the public's right to know and "to receive suitable access to social, political, esthetic, moral, and other ideas and experiences" are the paramount First Amendment interests. *Red Lion Broadcasting Corp.* v. *F.C.C.*, 395 U.S. 367, 390 (1969). See also *NBC* v. *United States*, 319 U.S. 190, (1943); *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945).

On the other hand, since broadcasting stations are inherently not available to all, due to scarcity in the publicly-owned radio spectrum, the allocation of stations

has properly been limited and placed under a licensing scheme. See, *e.g., NBC* v. *United States, supra.* Thus, under Congressionally delegated standards for regulation, which necessarily encompass First Amendment objectives as part of the public interest, the Commission is obligated to foster diversity of information sources and outlets to the fullest extent possible, *e.g., Associated Press* v. *United States*, supra; and it must do so in its licensing function by means which are least restrictive of First Amendment rights. *E.G., United States* v. *Robel,* 389 U.S. 258, 268, n. 20 (1967).

In regulating broadcasting to foster diversity of information sources, the Commission could not, for example, license all of the broadcast media in a particular locality to the same entity. This obviously would restrict the public's First Amendment right to receive access to a diversity of information sources. Today, given the demand for broadcast facilities, it would be similarly contrary to the First Amendment for the Commission to unduly restrict access to diversity of viewpoints, or access to the mass media generally, by allowing undue concentrations of control of the local mass media. Since rules relating to ownership are less restrictive than rules and regulations relating directly to program content, they are to be preferred as the least restrictive means to achieve true diversity of information sources in a locality. *Cf. CBS* v. *Democratic National Committee,* 412 U.S. 84 (1973).

Under this analysis, the Commission is obligated to adopt rules which, on the evidence adduced in the present extensive rulemaking proceeding, must foster diversity by the least restrictive means: a ban against significant cross-ownership of local mass media.

C. The Commission's Past Experience Shows That a Strict Rule Must Be Adopted, Rather Than a Policy Statement.

The Commission's past experience in regulation of multiple ownership clearly illustrates the compelling reasons for the Commission to proceed by rule, as opposed to action by policy, in removing or reducing concentrated ownership patterns in the mass communications media. Three examples of Commission experience with both types of regulation show clearly that the adoption of a strict rule limiting newspaper-television cross ownership is the only means by which concentration will be adequately curbed.

1. Duopoly Rules

In its 1964 amendment to the multiple ownership rules the Commission decided to issue specific rules defining "market", rather than to continue with a policy of ad hoc adjudication of the duopoly rules. In its *Report and Order,* 2 RR 2d 1588 (1964), the Commission made a commitment to diverse ownership that it should reaffirm in this docket.

> the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have 'an inordinate effect, in a political, editorial or similar programming sense, on public opinion at the regional level.' [12]

It went on to discuss the relative merits of adopting a rule versus continuing its past policies in attaining the goal of diversified ownership.

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[12] *Id.* at 1592.

Three considerations were paramount in the Commission's decision to adopt formal rules. The first consideration was consistency:

> A review of all cases decided under the present duopoly rules has convinced us that the pattern of grants which has developed through piecemeal litigation does not represent a desirable realization of our national multiple ownership policy. We feel, therefore, that *the most effective way to implement our policy against duopoly is to emphasize the overriding decisional significance of the problem through adoption of a fixed standard.*[13]

The second consideration was the strain on the Commission's resources by having to define the market difficulty in each case:

> We do not believe it to be in the public interest for the Commission to dissipate its limited resources in a manner not required by statute and not defensible in terms of the results achieved.[14]

The third consideration was fairness:

> A specific overlap rule defines the Commission's position with respect to duopoly problems as they may occur in all ordinary applications. To this extent, potential applicants are able to plan their proposals with a greater degree of foreknowledge and the Commission's staff is better guided in performing its function.[15]

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[13] *Id.* at 1594. [Emphasis added.]

[14] *Id.* at 1595.

[15] *Ibid.*

Although the Commission's 1964 reasoning was directed to ownership of broadcast facilities alone, its rationale then for adopting a strict rule barring concentration rather than proceeding through a policy statement that would be applied entirely on a case-by-case basis is also applicable to a ban on cross-ownership of broadcast newspaper interests.

2. Multiple Ownership Rules

a. Rule Limiting Total Number of Stations Owned by a Single Licensee

Not only has the Commission outlined in theory the benefits of rules that set firm outer limits on ownership patterns, but its record of enforcement emphasizes the point even further. In its 1953 Amendment of the Multiple Ownership Rules (9 RR 1563), the Commission by rule limited to five the number of VHF television stations that could be owned by one party. This rule has been enforced consistently, across-the-board by the Commission, and no multiple owner currently holds licenses for more than five VHF television stations.

b. Top 50 Markets Policy

In contrast, the Commission's Top 50 Markets "Policy" has been observed in the breach. Promulgated in the 1968 Report and Order on Television Multiple Ownership Rules (12 RR 2d 1501), the Top 50 Markets Policy requires "a compelling public interest showing by those seeking to acquire more than three stations (or more than two VHF stations) in [the top 50] markets."[16] The adoption of this policy brought an end to an "interim policy", upon which the Commission had previously re-

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[16] *Id.* at 1507.

lied, which required that a hearing be held on any application for a station in the top 50 markets if a grant of the application would result, in one owner having more than one station in those markets.

In his opinion dissenting from the adoption of the Top 50 Markets Policy, Nicholas Johnson foretold the impotence of the future policy by describing the ineffectiveness of the past "Interim Policy":

> This is the same 'compelling public interest showing' that a Commission majority has so far found to justify waiving the hearing requirement in every case brought to the Commission under the previous interim policy. Thus a majority found that a compelling public interest showing for doing violence to the rule was made when WGN of Colorado, Inc., acquired a VHF in Denver, Colorado; WKY Television Systems acquired a UHF in Milwaukee, Wisconsin; Storer acquired a UHF in Boston, Massachusetts; Kaiser acquired a UHF in the Boston, Massachusetts, market; Capital Cities sold a VHF station in Providence, Rhode Island, and acquired a VHF in Houston, Texas; Kaiser acquired a UHF in Cleveland, Ohio; Baldwin-Montrose Chemical Company acquired VHF's in Minneapolis, Minnesota, Los Angeles, California, and Portland, Oregon; the Newhouse communications group acquired a minority interest in a UHF in Denver, Colorado; American Viscose acquired six UHF's in top-fifty markets; and ITT was to have acquired VHF's in New York, Chicago, Los Angeles, Detroit, and San Francisco. In each case the interim policy required a 'compelling public interest showing'. Past experience indicates that this 'requirement' is demonstrably meaningless. The Commission's policy with regard to multiple ownership will be what is now in its rules, and no ad hoc determinations will tighten those standards.[17]

Just over a month after adopting the Top 50 Markets Policy, the Commission proved Commissioner Johnson's predictions correct. Metromedia, already holding licenses for four VHF stations in the top 50 markets, was permitted to acquire a UHF in San Francisco, bringing their holdings to almost twice that allowed by the policy.[18]

In the next two years the Commission approved Taft Broadcasting's purchase of its seventh television station in the top 50 markets;[19] Capital Cities' package purchase from Triangle Publications which resulted in its "trade up" in the top 50 markets;[20] and Albany Television, Inc.'s request to buy its third top 50 market station.[21]

Next, the Commission sanctioned Dun and Bradstreet's purchase of all three of Corinthian Broadcasting's top 50 markets stations.[22] And, although the Commission found "compelling" public interest reasons for allowing McGraw-Hill to violate the policy in its proposed purchase of Time-Life's broadcast stations, McGraw-Hill was not willing to put those reasons to test in court. It chose instead to divest the excess stations rather than

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[17] *Id.* at 1510.

[18] *S. H. Patterson*, 12 F.C.C. 2d 50 (1968). One of the justifications for the Commission's approval was Metromedia's extensive resources assisting the growth of UHF television. However, within two years Metromedia abandoned the station as unprofitable.

[19] *WIBF Broadcasting Co.*, 17 F.C.C. 2d 876 (1969).

[20] *Triangle Publications, Inc.*, 28 F.C.C. 2d 80 (1971).

[21] *Ibid.*

[22] *Corinthian Broadcasting Corp.*, 28 F.C.C. 2d 736 (1971).

risk court reversal of the Commission's approval.[23] The Commission next approved Metromedia's purchase of its *fifth* VHF station in the top 50 markets.[24] Then, stretching the credibility of its "policy" to the extreme, the Commission found it in the public interest to waive the Top 50 Markets Policy once again for Metromedia, this time granting permission for it to buy its *sixth* top 50 market station.[25]

Perhaps the Commission's attitude toward its Top 50 Markets Policy is best expressed in its recent decision granting permission to WKY Television to buy its fifth top 50 markets station.[26] To justify this violation of the policy, the Commission listed six previous cases involving waivers (all described above). In doing this, it apparently hoped that by reminding the public of how poorly the policy had been administered in the past, it would agree that this further violation was reasonable.[27]

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[23] *Time-Life Broadcasting, Inc.*, 33 F.C.C. 2d 1099 (1972).

[24] *Cris-Craft Industries, Inc.*, 24 RR 2d 729 (1972). The Commission's reasoning was: Metromedia had held four VHF licenses and one UHF license, all in the top 50 markets; but since Metromedia had abandoned the UHF when it proved unprofitable, the Commission found no reason not to let Metromedia replace the top 50 UHF with a top 50 VHF, particularly since the VHF was in a slightly smaller market than the UHF had been.

[25] *U.S. Communications of Ohio, Inc.*, 36 F.C.C. 2d 653 (1972). This grant was given in spite of the fact that Metromedia was buying another UHF, having dumped its first UHF station after deciding that its profits were not great enough, and in spite of the fact that it told the Commission it would make no promises of improved services until it could determine the station's profitability.

[26] *Tribune Publishing Co.*, 29 RR 2d 517 (1974).

[27] The Commission's description of previous waivers symbolizes its lack of real commitment to the policy. For example, the

[footnote continued]

It is clear from these examples that if the Commission is committed to furthering diverse ownership of newspapers and broadcast facilities in a manner that will provide for principled future decisions, it must do so through a rule specifying a *per se* limitation on concentration, and specifying fixed guides for factors to be considered in concentration showings below this fundamental limit.

V. THE KEY DEFINITIONS OF THE PROPOSED RULE

The two critical questions that must be answered to adopt any rational cross-ownership rule are: (a) What is the relevant "market" in which the two media compete; and (b) How is any particular newspaper or station's share of that market computed.

A. Definition of the Appropriate Market

In measuring concentration of media control in a given area, "market" must be defined in terms of both (1) geographic area and (2) viable competition for local news and advertising revenues. In the past, the Commission has chosen two different geographic standards for judging the extent of concentration of media control in a given area.

In *Frontier Broadcasting Co.*, 21 F.C.C. 2d 570 (1970), the Commission designated Frontier's renewal application for hearing on whether it had amassed an undue concentration of control of the mass communications media—including newspapers—in the Cheyenne, Wyoming, market. The Commission rejected Frontier's arguments that the television station's total Grade B contour was the relevant

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reasons provided for granting the waivers include such unhelpful rationales as "no concentration of control" involved, and "allowance of as many as six stations in the top 50 markets".

area for consideration of this issue. Instead, the Commission supported the position of the Justice Department and viewed the relevant area as solely that in and around the city of Cheyenne.

In *Chronicle Broadcasting Co.*, 40 F.C.C. 2d 775 (1973), *appeal pending sub nom. Kihn* v. *F.C.C.*, D.C. Cir. Case No. 73-1627, however, the Commission reversed its judgment in *Frontier.* It considered Chronicle Broadcasting Co.'s media holdings in terms of all the media available in KRON-TV's entire Grade B contour. Although KRON-TV is licensed to San Francisco, its Grade B contour stretches as far as Sacramento and Stockton to the east and Salinas and Monterey to the south. KRON-TV's Grade B contour, in other words, encompasses television markets other than the one to which it is licensed to serve.

NCCB submits that the *Frontier* standard was a far more reasonable definition of geographical area for judging concentration of control. It is meaningless to try to promote a wide diversity of news sources in local markets, and then to define "market" so broadly that it becomes regional rather than local.[28]

As for a definition of "market" in terms of competing interests for *local* news stories and advertising dollars, NCCB suggests that it is only meaningful to speak in terms of the media in a market that are actually dependent on the market for either content or financial support. Thus, in assessing the number of competing

[28]The Commission's reliance on KRON-TV's Grade B contour for determining the extent of its concentration of control has been appealed, along with other issues in the case, to the Court of Appeals for the D.C. Circuit. *Kihn* v. *F.C.C., supra.*

media interests in a market, national publications and out-of-town newspapers and broadcast stations should not be counted. Professor Stephen R. Barnett has provided prior extensive comments to this effect in this docket, and NCCB supports his observations.

B. Market Share Definition

Once the Commission has arrived at a definition of market which rests on a basis of local, competing media, it can determine which markets require divestiture of co-owned newspapers and broadcast stations. This can be done most fairly through procedures patterned on those suggested by Terrall M. de Jonckheere, in his comments, "Monopoly in the Media", submitted in this docket.

Under this analysis the three major sources of *local* news in a given market—newspapers, television stations and radio stations—would be given reasonable and proportionate weights on a scale of 100, based upon their relative importance as local informational sources. For example, all newspapers would be given a combined weight of 40, all television stations would be given a combined weight of 40, and all radio stations would be combined with a weight of 20. Such figures would provide a rough but [substantially] meaningful index for measuring concentration.

With figures arrived at from this or a similar approach, the concentration in each type of news medium within the market can then be analyzed as follows:

(1) *Newspapers:* Each daily newspaper is accorded its share of the circulation in the market. Thus, if only one daily newspaper exists, it is weighted at 40; if there are two with equal circulation, each is weighted at 20. De Jonckheere would not take weeklies into account. We believe that they should be weighted at one-seventh their respective circulations, if at all.

(2) *Television:* Each station is given its proportionate share of the audience in the market. This might best be computed for each station by averaging its share of the evening and 11 P.M. local newscast audiences, based on a total of 40, since the rule's premise is diversity in *local* information dissemination. Thus, if there are three stations, each of which reaches an equal share of the evening and 11 P.M. local news audiences, each would be weighted at one-third of 40 or 13.3.

(3) *Radio:* Each station could be weighed one of two ways. For simplicity, all the radio stations in the market could be given equal weight. Thus, if there were twenty stations, each would be weighted at one. Or, to follow the more refined analysis above, each station could be given its share of the total of 20 based on its ARB share of the market.

When these computations are completed, they provide a rough index of the domination of local news sources by each newspaper or broadcaster. NCCB submits that, based on these figures, owners of media totalling more than 30 points in the same market should be required to divest themselves of one or more outlets until their total share is under the maximum standard of 30% of the market, or they have only one medium remaining in the market.

Such a standard, at least as an initial step, would normally allow the same owner to continue to hold a newspaper and radio station or a television and radio station in the same market, provided there was more than one newspaper or television station in the market. In several cases it would allow continuation of broadcast-newspaper ties. Most locally co-owned newspapers and television stations would be split up, however, particularly in smaller cities, but also in many larger urban areas.

VI. PROCEDURAL ELEMENTS OF THE PROPOSED RULE

A. Provision for *Prima Facie* Test as well as *Per Se* Test

The above definitional criteria will assist the Commission in promoting a wide diversity of ownership on an equitable basis. They provide consistent and fair standards for deciding whether or not to order divestiture *per se*, and will give the Commission the tools to meet the due process requirements called for in requiring divestiture by rule without an individual hearing.

Although the 30 percent rule described above would provide clear relief to communities suffering from egregious concentration of media control, relief must not be blocked off from the public in communities in which the ownership structure does not violate the specific ban, but is concentrated nevertheless. Thus, along with any rule that the Commission adopts setting a firm top limit on local cross-ownership, it should also by rule provide guidelines for cases involving concentration less than that prohibited *per se*.

Situations may arise, for example, where one party controls extensive non-media interests in a market, or media interests just outside that market. Even though its holdings may be technically within the Commission's outside limits, that party exercises an undue economic control of the market. The public interest requires a rule defining criteria for a Commission investigation and possible divestiture in such cases. Concurrent adoption of a rule providing a lower percentage for a presumption of concentration would be particularly critical if the Commission were to adopt a divestiture rule less strict than the 30% rule suggested here, since a large number of

markets suffering serious concentration of control problems would be exempted from automatic divestiture.

Appropriate guidelines for such undue concentration situations below the *per se* rule might well be developed as part of the Commission's *Inquiry into the Ownership of Broadcast Stations by Persons or Entities with Other Business Interests*, Docket No. 18449, 16 F.C.C. 2d 436 (1969) (the "Conglomerate Inquiry"). However, considering the fact that the Commission appears to have forgotten that inquiry, NCCB fears that deferring to that inquiry for definition of concentration guidelines will mean virtual abandonment of the attempt to define such guidelines.[29]

B. Effects of Ban on Acquisitions

The Commission's proposal, as outlined in the 1970 *Further Notice*, addresses not only divestiture of already-existing newspaper-broadcast combinations, but also acquisition of one medium by another in the same market. It suggests that

> if a broadcast station licensee were to purchase one or more daily newspapers in the same market, it would be required to dispose of any broadcast stations that it owned there within one year or by the time of its next renewal date, whichever is longer. No grants for broadcast station licenses would be made to owners of one or more daily newspapers in the same market.[30]

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[29] After five years, the Commission has yet to issue either a Notice of Proposed Rule Making or a termination order in Docket 18449.

[30] *Further Notice, supra*, at 346.

The media will argue that such a ban on future cross-acquisition will bring about decreased competition and diversity of news sources. Cases will be described in which floundering newspapers or stations will allegedly go out of business if they cannot be bought and nursed back to life by their competitor. To meet the test of the rules, we assume that to obtain a waiver on the grounds of an increase in diversity and competition the transferor would have to prove that no other buyer could be found after a long and diligent search. But even if this were true, providing relief in such cases would distort the proper government role in regulating the broadcasting industry. The F.C.C. was intended to promulgate rules and make decisions which promote free competition, not to prop up enterprises that prove unsuccessful. The Commission can take special circumstances into account, as to new communications forms, to help them get established, such as UHF and cable television. But to extend such reasoning to mean that old and well-established communications industries deserve the government's helping hand in anti-competitive practices confuses the basis of our free enterprise system.

Finally, it is not necessarily true that keeping one medium alive by allowing it to be co-owned by another medium does actually increase diversity. It is probable that a great number of other, smaller suburban and "underground" newspapers would develop in the void left by the failure of a daily newspaper. This has in fact happened in many cities, such as San Francisco, where a strike against the two daily papers in the 1960's led readers to choose between a plethora of Bay Area tabloid voices that vastly expanded their circulation to meet the information need.

C. Requirement of Consideration of Minority and Local Ownership Factors in Divestiture

Because of the current exclusion of minorities from ownership of the critical broadcast media in this country,[31] NCCB believes that minorities should be granted an initial opportunity to bid for any broadcast property required to be divested as a result of any rule adopted in this Docket. Such an approach, we submit, is consistent with the Commission's authority to allocate facilities equitably, to see that all community interests are served by broadcast outlets, and to further First Amendment and competitive objectives. Such an approach is judicially encouraged by the decision in *Florida Heartland Television Inc. v. F.C.C.*, F. 2d (D.C. Cir., November 6, 1973).

For this reason we have included, as part of our proposed divestiture rule, a requirement that any party required to divest a broadcast property under the rule must demonstrate and certify that affirmative actions were taken to assign the property to minority persons, with initial preference to local minority persons, consistent with the Commission's long standing preference for local ownership.

Because of this latter preference, we have also included a third order of priority for divestiture – to non-minority local owners – prior to a sale to a non-local non-minority interest.

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[31] See National Black Media Coalition Petition for Rule-making, RM – , 17-23. (Filed November 12, 1973).

CONCLUSION

For the above reasons, NCCB urges the Commission to face this critical issue squarely, reaffirm its statements as to the seriousness of this problem in its 1970 *Further Notice*, and act quickly to require prophylactic divestiture of outlets in all cross-owned newspaper-television stations. In the alternative, NCCB urges the Commission to adopt a divestiture rule such as that set forth in detail herein and in the Appendix, and to bar all future acquisitions that would create joint newspaper-television combinations.

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APPENDIX

RULE

73.636(a) No license for a television broadcast station shall be granted to any party (including all parties under common control) if:

* * *

(3) Such party, or any stockholder, officer or director of such party directly or indirectly owns, operates, controls or has any interest in, or is an officer or director of any daily or weekly newspaper of general circulation in the city of license, or the standard metropolitan statistical area (SMSA) of the city of license, where such properties, taken together with all local broadcast stations, constitute an undue concentration of control of local mass media.

(A) Such properties shall constitute a *per se* concentration of control of the local mass media if they comprise at least 30% of the local mass media outlets for the particular locality, assigning the following criteria for such determination:

(i) For cross-owned newspapers, 40% of its pro rata share of net weekly circulation of all local daily and weekly newspapers of general circulation in the city of license or in the SMSA of the city of license, whichever yields the percentage figure;

(ii) For cross-owned television stations, 40% of its pro rata share of net weekly circulation of all local television stations assigned to the same market; and

(iii) For cross-owned radio stations, 20% of its numerical percentage of the total number of radio stations licensed in the market.

(B) Such properties shall constitute a prima facie concentration of control if they comprise at least 20% of the local mass media outlets for the particular locality, assigning the preceding criteria ((i)-(iii)) for such determination.

(C) The Commission shall designate for hearing all applications which, if granted, would constitute a *prima facie* concentration of control. At such hearing the applicant shall have the burden of demonstrating that a concentration of control of the local mass media would not result from a grant of the application, taking into account the following factors:

(i) The party's ownership of other information disseminating entities which are not included in A) (i)-(iii) above, including national weekly and monthly magazines, non-local newspapers, and other broadcasting stations in the region or nation.

(ii) Joint operating agreements or other economic ties with competing or affiliated newspapers or publications.

(iii) Local or regional economic concentration of control, including advertising revenues and outside economic interests which directly or indirectly bear on the operation of the television station.

(iv) Integration of ownership and management, with the facts of non-local ownership or nonintegrated management bearing against the applicant.

(v) The furthering of First Amendment interests and objectives.

(D) The Commission may at any time and in any case determine that a concentration of control of the local mass media in fact exists if the record facts so warrant, whether or not the total concentration of control exceeds the 20% of local mass media outlets as set forth in (B) above, but its consideration of this question shall in any event be limited to consideration of the factors specified in (C) (i)-(v) above.

* * *

Note 10: Paragraph (a)(3) will apply to all applications for new stations, transfers of control or assignments of license and all major changes in existing stations. Parties which are either per se or prima facie concentrations of control of the local mass media shall be permitted to retain such interests until July 1, 1979. After that date, no television license shall be renewed if a per se concentration of control of the local mass media exists, and those renewal applicants with a prima facie concentration of control shall be set for hearing in accordance with paragraph (a)(3)(c).

* * *

SUPPLEMENT TO NATIONAL ASSOCIATION OF BROADCASTERS EXHIBIT C REGARDING CROSS-OWNERSHIP OF BROADCASTING STATIONS AND NEWSPAPERS [May 1974]

This is a supplementary exhibit and statement by the National Association of Broadcasters (NAB) filed in response to the order of the FCC in the above entitled docket released March 7, 1974. The NAB has filed general comments on the proposed rule, on April 8, 1971 and August 18, 1971. These comments were based on and supported by empirical data reported in NAB Exhibits A to E, also filed in this docket. This supplement will not repeat or review the comments on the proposed rule but presents the results of a further investigation updating the material in NAB Exhibit C, relating to the cross-ownership of broadcasting stations and newspapers in the top 100 markets during the period 1922 to 1967.

Exhibit C presented data showing, inter alia, that from 1950 to 1967 in the top 100 Standard Metropolitan Statistical Areas there was a slight but steady decrease in the concentration of ownership of daily media (i.e. daily newspapers and broadcasting stations), that both media outlets (stations and newspapers) and separate voices (i.e. separate owners) increased faster than the population, and that newspaper affiliation of broadcasting stations decreased sharply, with less than 7% of all broadcasting stations newspaper-affiliated by 1967.

The same investigator (Dr. Christopher H. Sterling), following the same methodology set forth in NAB Exhibit C has now brought the data up to 1970. Attached hereto are thirteen tables corresponding to the tables of NAB Exhibit C and setting forth the same data with the addition of data for the year 1970 (which is the latest year for which data can be secured at this time).

The updating of this exhibit shows that the trends previously observed have been continued, and that the conclusions previously stated have been corroborated.

Since the FCC Order of March 7, 1974 invited the parties to focus primarily on the newspaper-television station cross-ownership proposal, it appears appropriate to draw attention particularly to the following facts.

(A) The total number of media outlets (i.e. stations and newspapers), the total number of separate media voices (i.e. different owners), the total number of broadcast outlets, and the total number of separate broadcast voices have all continued to grow. From 1922 to 1970 the number of broadcast outlets in the top 100 markets increased by 1,062% and the number of broadcast voices increased by 713%.

(B) The number of media outlets and of media voices (i.e. separate media owners) continued to increase faster than the population, so that there were more media outlets per thousand population in 1970 than in any prior year, as well as more separate media voices.

(C) Newspaper control of, or affiliation with, broadcast outlets continued a sharp decline. By 1970 only 4% of broadcast stations were affiliated with newspapers and only 3% of the broadcasters in the top 100 markets were publishers or affiliated with publishers. From1922 to 1940 the percentage of total broadcasters with newspaper affiliations increased, but it has decreased since 1940 and by 1970 the percentage of all broadcasters with newspaper affiliations was lower than it has been in any year since broadcasting began in 1922, by any measure. (See Tables 7 and 8).

The foregoing facts, and the more detailed data set forth in the attached tables updating the tables of NAB

Exhibit C, are largely self-explanatory. However, the NAB has heretofore requested the opportunity to appear and argue orally before the FCC and reserves the right to comment further on the significant of these data, either orally or in writing as may be appropriate.

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Table 1: Total Media Outlet/Voice Growth

	Outlets		Voices	
Market Group	Growth Rate	1922 to 1970	Growth Rate	1922 to 1970
Top 10	177%	286 to 793	110%	271 to 569
Top 25	206	436 to 1337	141	401 to 966
Top 50	238	635 to 2152	161	599 to 1566
Top 100	269	877 to 3240	185	829 to 2360

Table 2: Broadcast Outlet/Voice Growth

	Outlets		Voices	
Market Group	Growth Rate	1922 to 1970	Growth Rate	1922 to 1970
Top 10	672%	81 to 625	462%	81 to 455
Top 25	714	134 to 1091	486	134 to 791
Top 50	863	185 to 1781	599	185 to 1293
Top 100	1062	242 to 2724	713	242 to 1965

Table 3: Newspaper Outlet/Voice Decline

	Outlets		Voices	
Market Group	Decline Rate	1922 to 1970	Decline Rate	1922 to 1970
Top 10	−18%	205 to 168	−42%	197 to 114
Top 25	−19	302 to 246	−39	288 to 175
Top 50	−18	450 to 371	−37	434 to 273
Top 100	−18	635 to 521	−34	603 to 396

Table 4: Media Concentration

Market Group	1922	1930	1940	1950	1960	1967	1970
Top 10	.06	.12	.16	.30	.29	.28	.28
Top 25	.08	.12	.18	.32	.29	.28	.27
Top 50	.06	.10	.20	.32	.29	.29	.27
Top 100	.06	.09	.21	.32	.30	.30	.27

Table 5: Broadcasting Concentration

Market Group	1922	1930	1940	1950	1960	1967	1970
Top 10	–	.02	.02	.34	.28	.28	.28
Top 25	–	.03	.04	.33	.29	.27	.27
Top 50	–	.02	.04	.32	.28	.27	.27
Top 100	–	.01	.06	.28	.27	.27	.28

Table 6: Broadcast Independent/Multiple Owners

Market	Outlets				Voices			
Group	1950	1960	1967	1970	1950	1960	1967	1970
Top 10	.37:.63	.50:.50	.50:.50.	.50:.50	.55:.45	.69:.32	.69:.31	.68:.32
Top 25	.40:.60	.48:.52	.50:.50	.51:.49	.53:.43	.62:.35	.68:.32	.69:.31
Top 50	.43:.57	.50:.50	.51:.49	.51:.49	.57:.41	.67:.32	.69:.31	.69:.31
Top 100	.48:.51	.51:.48	.49:.50	.49:.51	.60:.37	.68:.31	.67:.32	.66:.33

Table 7: Newspaper Control of Broadcast Outlets

Market Group	1922	1930	1940	1950	1960	1967	1970
Top 10	.04	.07	.16	.18	.09	.06	.03
Top 25	.08	.11	.21	.20	.08	.07	.03
Top 50	.12	.07	.21	.21	.09	.07	.04
Top 100	.09	.07	.23	.21	.11	.07	.04

Table 8: Newspaper Control of Broadcast Voices

Market Group	1922	1930	1940	1950	1960	1967	1970
Top 10	.09	.07	.17	.15	.07	.04	.03
Top 25	.09	.10	.21	.21	.06	.04	.02
Top 50	.06	.07	.21	.19	.06	.04	.02
Top 100	.05	.07	.23	.19	.08	.05	.03

Table 9: Group-Conglomerate Control of Broadcast Outlets

Market Group	1922	1930	1940	1950	1960	1967	1970
Top 10	.16	.17	.40	.25	.35	.40	.38
Top 25	.10	.11	.40	.19	.32	.37	.34
Top 50	.05	.10	.45	.17	.31	.36	.34
Top 100	.02	.06	.39	.14	.29	.33	.32

Table 10: Group-Conglomerate Control of Broadcast Voices

Market Group	1922	1930	1940	1950	1960	1967	1970
Top 10	.15	.15	.37	.18	.29	.32	.30
Top 25	.09	.09	.39	.15	.27	.30	.28
Top 50	.04	.09	.42	.14	.27	.31	.29
Top 100	.05	.07	.41	.12	.25	.30	.28

Table 11: Growth of Broadcast Voice Combinations

Market	1950		1960		1967		1970	
Group	AM-FM	R-TV	AM-FM	R-TV	AM-FM	R-TV	AM-FM	R-TV
Top 10	66	26	72	37	86	46	90	53
Top 25	100	44	113	75	155	78	169	83
Top 50	153	65	159	130	238	134	267	137
Top 100	228	84	215	218	356	215	408	217

Table 12: Media Outlets Per 1000 Population

Market Group	1920	1930	1940	1950	1960	1967	1970
Top 10	.018	.014	.011	.016	.018	.019	.019
Top 25	.024	.016	.013	.018	.022	.022	.027
Top 50	.026	.018	.016	.024	.028	.029	.032
Top 100	.028	.021	.020	.031	.036	.040	.046

Table 13: Media Voices Per 1000 Population

Market Group	1920	1930	1940	1950	1960	1967	1970
Top 10	.017	.012	.010	.011	.013	.014	.013
Top 25	.022	.014	.011	.012	.015	.016	.016
Top 50	.026	.013	.014	.016	.020	.021	.021
Top 100	.027	.017	.017	.020	.025	.028	.029

SUPPLEMENTAL STATEMENT OF NATIONAL ASSOCIATION OF BROADCASTERS AND EXHIBIT F REGARDING RECENT TRANSFERS OF BROADCASTING STATIONS (REVISED) [May 1974]

The National Association of Broadcasters (NAB hereby submits Exhibit F (revised), as an addition and supplement to the exhibits and statements heretofore filed in the above entitled docket by the NAB, in response and pursuant to the order of the Commission in said docket released March 7, 1974.

This revised statement and exhibit is filed to supersede the supplemental statement and Exhibit F recently filed in order to correct two typographical errors which appeared in tables 1 and 3. Both errors were minor, the change in data is not substantial, and the conclusions are not affected. However, in the interest of attaining the greatest accuracy which time and circumstances permit, the NAB desires to substitute this revised statement and Exhibit F for the one previously filed.

The NAB calls attention to the comments on the proposed rule filed herein by the NAB on April 8, 1971, and August 18, 1971, and to NAB Exhibits A to E, that contained a mass of empirical data upon which the comments were based. The NAB also calls attention to the Supplement to Exhibit C, recently filed pursuant to the FCC March 7th Order. This demonstrates unequivocally that both media cross-ownership and concentration of media ownership declined from 1950 to 1970 and that broadcasting-newspaper affiliations are at an historic low point, constituting a smaller percentage of

broadcasting licensees or stations than at any time since the beginning of broadcasting in 1922.

In order to insure that the empirical data on which its comments are based continue to be valid and completely current, the NAB has further undertaken a study of all applications for broadcast licenses and license transfers reported during the period July 6, 1970, to April 14, 1974. The methodology of that study is reported in the "Appendix" attached hereto, and the results are reported in tables A-1 and A-2 and tables 1, 2, and 3, attached hereto.

The Appendix and annexed tables comprise NAB Exhibit F (revised) and are self-explanatory. They show the following data:

Table A-1 — Television stations affiliated with newspapers in their respective cities of publication as of April 15, 1974.

Table A-2 — Radio stations affiliated with newspapers in their respective cities of publication as of April 15, 1974.

Table 1 — Applications for new broadcasting stations, July 6, 1970 to April 14, 1974, classified by applicant's other media interests.

Table 2 — Applications for station transfers, July 6, 1970 to April 14, 1974, classified by seller's (transferor's) other media interests.

Table 3 — Applications for station transfers, July 6, 1970 to April 14, 1974, classified by buyer's (transferee's) other media interests.

Analysis of the data presented in this exhibit shows that the trend away from cross-media ownership or affiliation has continued to the present. Out of a total

of 654 applications for new station licenses, only 3 were by newspaper affiliated applicants, and in each of these cases the applicant had an AM license and was seeking a companion FM license. Disregarding applications involving changes of facilities within a community and AM-FM combinations, which the FCC now expressly permits, only 5 applications out of a total of 654 involved media affiliated applicants.

The data relating to transfer applications are even more dramatic in showing the trend away from multi-media affiliation in single markets. Newspapers were sellers of broadcast interests in 35 applications for transfer and were buyers in only two. Both newspaper buyers were seeking to purchase AM stations – none sought to purchase television stations. Television-affiliated licensees were sellers in 19 transfer applications, and not a single television affiliated licensee was a buyer. Disregarding AM-FM combinations and exchanges of similar facilities within a community, out of a total of 1,062 transfer applications during the period studied only a single one involved the acquisition of a broadcasting license by an applicant with other media affiliations in the community. That single exception was a newspaper affiliated applicant which sought to acquire an AM station.

This exhibit, together with the material previously filed herein by the NAB, shows beyond any possibility of a reasonable doubt that the trend toward market deconcentration, or the holding of licenses by licensees without other media interests in the same market, is continuing to the present time. These exhibits and supplementary data thus strongly corroborate the conclusions previously drawn from the exhibits filed by the NAB, and set forth in the NAB comments on the proposed rule. In addition to all the objections to the proposed rule

previously specified by the NAB, the present studies and data show conclusively that there is no need or occasion for further consideration of the proposed rule. Every objective that has been urged as a purpose or justification of the proposed rule is being achieved by economic market forces operating within the framework of present FCC rules and regulations.

In addition to the numerous other reasons against adoption of the proposed rule, the current data show that it it is quite needless and would be futile.

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APPENDIX

1. *Broadcasting* magazine's "For the Record" was examined for the period July 6, 1970, to April 14, 1974, to determine activity related to ownership of new stations and changes in ownership of existing stations. For all applications for new TV, AM, and FM stations, the following data were recorded: medium; market; application date; final action date; owner(s); and other broadcasting interests held by the owner(s). For applications for ownership changes, these data were recorded: medium; market; call letters; application date; final action date; nature of transaction (e.g., transfer of control, transfer of license); seller(s); other broadcasting interests of seller's ; buyer's); and other broadcasting interests of buyer's).

2. A list of broadcast stations presently in common ownership with a newspaper in the same community was constructed (see Tables A-1 and A-2). The primary source of data for constructing the list was "Broadcast Stations Identified with Newspaper or Magazine Ownership," in the 1974 *Broadcasting Yearbook*. This was supplemented by examining the 1973 *Editor & Publisher*

Year Book "Surveys of Daily Newspapers Published in the United States" for broadcast affiliate listings, or other indications of affiliation of a broadcast station with a newspaper in the same community.

3. For applications for transfer of ownership, ownership interest in other media in the same community were then coded. Ownership interest in other broadcast media was determined by referring to ownership data taken from "For the Record." Newspaper affiliation of the seller (if not indicated in "For the Record") was determined by referring to a 1971 list of newspaper-affiliated broadcast properties; newspaper affiliation of the buyer was determined (if not indicated in "For the Record") by reference to the current list of newspaper-affiliated stations described in the preceding paragraph.

For new applications, ownership interests of the applicant in other media in the community were similarly determined by referring to the ownership data taken from "For the Record" and to the current list of newspaper-affiliated stations.

4. Limitations of the data: These procedures produced data that are subject to error for various reasons. The source data were found in some instances to be incorrect or incomplete; where such instances were noticed, corrections were made, but it is unrealistic to think that all such errors were detected. In addition, the sheer volume of information that was processed, and the relatively short time in which it was done, undoubtedly resulted in additional errors being made. The numbers reported in Tables 1, 2, and 3 may not, therefore, be absolutely accurate. Any such errors should not, however, affect the orders of magnitude reported in the tables, and hence should not affect the conclusions drawn from the tables.

TABLE A-1

Television Stations Affiliated with Newspapers in City of Publication (As of April 15, 1974)

State	*City*	*Call Letters*
Alabama	Anniston	WHMA-TV
	Birmingham	WAPI-TV
Arkansas	Little Rock	KTHV(TV)
California	Fresno	KMJ-TV
	Sacramento	KOVR (TV)
	San Francisco	KRON-TV
Colorado	Denver	KHBC (TV)– Construction Permit only
District of Columbia	Washington	WMAL-TV
	Washington	WTOP-TV
Florida	Tampa	WFLA-TV
Georgia	Albany	WALB-TV
	Atlanta	WSB-TV
Idaho	Idaho Falls	KIFI-TV
Illinois	Champaign	WCIA (TV)
	Chicago	WFLD-TV
	Chicago	WGN-TV
	Quincy	WGEM-TV
	Rock Island	WHBF-TV
Indiana	Bloomington	WTTV (TV)
	Elkhart	WSJV (TV)
	South Bend	WSBT-TV
	Terre Haute	WTHI-TV
Iowa	Cedar Rapids	KCRG-TV
	Des Moines	KRNT-TV
	Mason City	KGLO-TV
Kansas	Topeka	WIBW-TV
Kentucky	Louisville	WHAS-TV
	Paducah	WPSD-TV
Louisiana	Baton Rouge	WBRZ (TV)
	Shreveport	KSLA-TV
Maine	Portland	WGAN-TV
Maryland	Baltimore	WBAL-TV
	Baltimore	WMAR-TV
Michigan	Detroit	WWJ-TV

State	*City*	*Call Letters*
Minnesota	Duluth-Superior, Wisc.	WDSM-TV
	Minneapolis	WCCO-TV
Mississippi	Columbus	WCBI-TV
	Jackson	WJTV (TV)
	Meridian	WTOK-TV
Missouri	Joplin	KOAM-TV
	St. Louis	KSD-TV
	St. Louis	KTVI (TV)
	Springfield	KYTV (TV)
Nebraska	Hastings	KHAS-TV
	Omaha	KETV (TV)
Nevada	Las Vegas	KORK-TV
New York	Buffalo	WBEN-TV
	New York	WPIX (TV)
	Rochester	WHEC-TV
	Syracuse	WSYR-TV
	Watertown	WWNY-TV
North Carolina	Greensboro	WFMY-TV
	Hickory	WHKY-TV
North Dakota	Fargo	WDAY-TV
Ohio	Akron	WAKR-TV
	Cincinnati	WCPO-TV
	Cleveland	WEWS (TV)
	Columbus	WBNS-TV
	Dayton	WHIO-TV
	Youngstown	WFMJ-TV
	Zanesville	WHIZ-TV
Oklahoma	Oklahoma City	WKY-TV
Oregon	Portland	KOIN-TV
Pennsylvania	Erie	WSEE (TV)
	Harrisburg	WTPA (TV)
	Johnstown	WJAC-TV
	Lancaster	WGAL-TV
South Carolina	Anderson	WAIM-TV
	Greenville	WFBC-TV
Tennessee	Memphis	WMC-TV
Texas	Dallas	KDFW-TV
	Dallas	WFAA-TV
	Houston	KPRC-TV
	San Antonio	KENS-TV
	Temple	KCEN-TV
	Texarkana	KTAL-TV

State	*City*	*Call Letters*
Utah	Salt Lake City	KSL-TV
Virginia	Norfolk	WTAR-TV
Washington	Spokane	KHQ-TV
West Virginia	Bluefield	WHIS-TV
Wisconsin	Milwaukee	WTMJ-TV
	Wausau	WSAU-TV

TABLE A-2

Radio Stations Affiliated with Newspapers in City of Publication (As of April 15, 1974)

State	*City*	*Call Letters*
Alabama	Anniston	WHMA-AM-FM
	Birmingham	WAPI-AM-FM
Arkansas	Camden	KAMD/KWEH (FM)
	Fort Smith	KFSA
	Hope	KXAR
California	Fresno	KMJ-AM-FM
	Modesto	KBEE-AM-FM
	Sacramento	KFBK-AM-FM
	San Francisco	KRON-FM
	San Rafael	KTIM-AM-FM
	Santa Barbara	KTMS-AM-FM
	Santa Cruz	KSCO-AM-FM
	Santa Rosa	KSRO
Connecticut	Stamford	WSTC-AM-FM
District of Columbia	Washington	WMAL-AM-FM
	Washington	WTOP
Florida	Miami	WIOD/WAIA (FM)
	Tampa	WFLA-AM-FM
Georgia	Atlanta	WSB-AM-FM
Hawaii	Honolulu	KOHO
Idaho	Couer d'Alene	KVNI
Illinois	Bloomington	WJBC/WBNQ-FM
	Canton	WBYS-AM-FM
	Champaign	WDWS-AM-FM
	Chicago	WGN

State	*City*	*Call Letters*
	Decatur	WSOY-AM-FM
	Effingham	WCRA-AM-FM
	Galesburg	WGIL-AM-FM
	Jacksonville	WLDS/WEAI (FM)
	Kankakee	WKAN
	LaSalle	WLPO-AM-FM
	Macomb	WKAI-AM-FM
	Quincy	WGEM-AM-FM
	Rock Island	WHBF-AM-FM
	Urbana	WPGU-(FM)
	Waukegan	WKRS
Indiana	Bloomington	WTTS/WTTV-FM
	Connersville	WCNB-AM-FM
	Elkhart	WTRC/WFIM (FM)
	Fort Wayne	WGL
	South Bend	WSBT-AM-FM
	Terre Haute	WTHI-AM-FM
	Vincennes	WAOV-AM-FM
	Warsaw	WRSW-AM-FM
Iowa	Burlington	KBUR-AM-FM
	Cedar Rapids	KCRG
	Des Moines	KRNT-AM-FM
	Dubuque	KDTH/KFMD (FM)
	Marshalltown	KFJB-AM-FM
	Mason City	KGLO
Kansas	Arkansas City	KSOK
	Coffeyville	KGGF
	Dodge City	KGNO-AM-FM
	Garden City	KIUL
	McPherson	KNEX-AM-FM (FM is not on the air)
	Manhattan	KMAN/KMKF-FM
	Topeka	WIBW-AM-FM
Kentucky	Bowling Green	WKCT/WDNS (FM)
	Corbin	WCTT-AM-FM
	Louisville	WHAS-AM-FM
	Middlesboro	WMIK-AM-FM
	Owensboro	WOMI/WBKR (FM)
Louisiana	Baton Rouge	WJBO-AM-FM
	Shreveport	KWKH/KROK (FM)
Maine	Portland	WGAN-AM-FM

State	*City*	*Call Letters*
Maryland	Baltimore	WBAL-AM-FM
	Baltimore	WMAR-FM
Massachusetts	Brockton	WBET-AM-FM
	Northhampton	WHMP-AM-FM
	Worcester	WTAG
Michigan	Albion, Marshall	WALM-AM-FM
	Benton Harbor	WHFB-AM-FM
	Detroit	WWJ-AM-FM
	Jackson	WIBM/WBBC (FM)
	Owosso	WOAP-AM-FM
	Saginaw	WSGW/WSBM (FM)
Minnesota	Duluth-Superior, Wisc.	WDSM
	Minneapolis	WCCO-AM-FM
	New Ulm	KNUJ-AM-FM
	St. Cloud	KFAM-AM-FM
Mississippi	Columbus	WCBI
	Greenville	WDDT
	Jackson	WSLI-AM-FM
	Meridian	WMOX
Missouri	Brookfield	KGHM
	Columbia	KFRU
	Festus	KJCF
	St. Louis	KSD
	Springfield	KGBX
	Warrensburg	KOKO
Montana	Miles City	KATL
Nebraska	Hastings	KHAS
	Norfolk	WJAG-AM-FM
Nevada	Las Vegas	KORK-AM-FM
New Jersey	Asbury Park	WJLK-AM-FM
New Mexico	Grants	KMIN
New York	Buffalo	WBEN-AM-FM
	New York	WPIX-FM
	New York	WQXR-AM-FM
	Olean	WHDL-AM-FM
	Syracuse	WSYR-AM-FM
	Watertown	WWNY
North Carolina	Asheboro	WGWR/WCSE (FM)
	Asheville	WWNC
	Durham	WDNC-AM-FM
	Hickory	WHKY-AM-FM

State	*City*	*Call Letters*
North Dakota	Fargo	WDAY-AM-FM
Ohio	Akron	WAKR/WAEZ (FM)
	Ashtabula	WREO-AM-FM
	Columbus	WBNS-AM-FM
	Dayton	WHIO-AM-FM
	Elyria	WEOL/WBEA)FM)
	Findlay	WFIN-AM-FM
	Nelsonville	WNAL (not on the air)
	Newark	WCLT-AM-FM
	Warren	WHHH
	Wooster	WWST-AM-FM
	Youngstown	WFMJ
	Zanesville	WHIZ-AM-FM
Oklahoma	Ardmore	KVSO
	Durant	KSEO-AM-FM
	Enid	KCRC-AM-FM
	Muskogee	KBIX
	Oklahoma City	WKY
	Ponca City	WBBZ
	Shawnee	KGFF
	Stillwater	KSPI-AM-FM
Oregon	Grants Pass	KAGI
	Portland	KOIN-AM-FM
Pennsylvania	Bedford	WBFD/WAKM (FM)
	Clearfield	WCPA-AM-FM
	DuBois	WCED-AM-FM
	Easton	WEEX/WQQQ (FM)
	Gettysburg	WGET-AM-FM
	Harrisburg	WTPA-FM
	Huntingdon	WHUN-AM-FM
	Johnstown	WJAC-AM-FM
	Lancaster	WGAL-AM-FM
	Lansdale	WNPV
	Lewistown	WMRF-AM-FM
	Philadelphia	WPBS (FM)
	Pittsburgh	WWSW/WPEZ (FM)
	Reading	WEEU
	Scranton	WEJL-AM-FM
Rhode Island	Providence	WEAN/WPJB-FM
	Woonsocket	WWON-AM-FM
South Carolina	Anderson	WAIM/WCAC (FM)
	Greenville	WFBC-AM-FM
	Orangeburg	WTND

State	*City*	*Call Letters*
South Dakota	Aberdeen	KSDN
Tennessee	Johnson City	WETB
	Knoxville	WNOX
	Memphis	WMC-AM-FM
Texas	Conroe	KMCO/KNRO-FM
	Dallas	WFAA/KZEW (FM)
	Houston	KPRC
	Temple	KTEM
	Texarkana	KCMC/KTAL-FM
Utah	Salt Lake City	KSL-AM-FM
Virginia	Fredericksburg	WFLS-AM-FM
	Newport News	WGH-AM-FM
	Norfolk	WTAR-AM-FM
Washington	Spokane	KHQ-AM-FM
	Tacoma	KTNT-AM-FM
West Virginia	Bluefield	WHIS-AM-FM
	Morgantown	WAJR-AM-FM
Wisconsin	Antigo	WATK-AM-FM
	Janesville	WCLO/WJVL (FM)
	Madison	WIBA-AM-FM
	Milwaukee	WTMJ-AM-FM
	Shawano	WTCH-AM-FM
	Wausau	WSAU/WIFC (FM)
	Wisconsin Rapids	WFHR/WWRW (FM)
Wyoming	Cheyenne	KFBC-AM-FM
	Rock Springs	KVRS
Puerto Rico	San Juan	WKAQ-AM-FM

TABLE 1

Applications for New Stations – Classified by Applicant's Other Media Interests
(As reported in *Broadcasting*, July 6, 1970, to April 14, 1974)

	Type of Station Applied for				
Applicant Interest(s) in Same Community	TV	AM	FM	AM/FM	Total
Newspaper/AM			3		3
AM	1	1	179		181
FM	3				3
TV/AM			1		1
None	35	64	366	1	466
Total	39	65	549	1	654

TABLE 2

Applications for Transfers – Classified by Seller's Other Media Interests*
(As reported in *Broadcasting*, July 6, 1970, to April 14, 1974)

	Type of Station Sold							
Seller Interest(s) in Same Community	TV	TV/AM	TV/FM	TV/AM/FM	AM	FM	AM/FM	Total
Newspaper	3			1	18	3	6	31
Newspaper/TV/AM						2		2
Newspaper/AM	1							1
Newspaper/AM/FM	1							1
Television					7	6	3	16
TV/AM						1		1
AM	1					16		17
FM					10			10
AM/FM	11							11
None	55	2	1	1	531	205	177	972
Total	72	2	1	2	566	233	186	1062

*See Table 3 for applications classified by buyer's other media interests.

TABLE 3

Applications for Transfers – Classified by Buyer's Other Media Interests*
(As reported in *Broadcasting*, July 6, 1970, to April 14, 1974)

	Type of Station Purchased							
Buyer Interest(s) in Same Community	TV	TV/AM	TV/FM	TV/AM/FM	AM	FM	AM/FM	Total
Newspaper					1			1
Newspaper/FM					1			1
AM					1	28		29
FM					6			6
None	71	2	1	2	558	204	187	1025
Total	71	2	1	2	567	232	187	1062

*See Table 2 for applications classified by seller's other media interests.

FURTHER COMMENTS OF THE PULITZER PUBLISHING COMPANY AND KSD/KSD-TV INC. [May 15, 1974]

The Pulitzer Publishing Company ("Pulitzer"), publisher of the *St. Louis Post-Dispatch*, and KSD/KSD-TV Inc., a wholly owned subsidiary of Pulitzer and licensee of a standard broadcast (KSD) and television station (KSD-TV) located in St. Louis, Missouri, file these further comments, by their attorneys, in response to the proposed rules outlined by the Commission in the Further Notice of Proposed Rule Making adopted March 25, 1970, 22 F.C.C. 2d 339, and to the questions set forth in the Commission's Memorandum Opinion and Order adopted February 28, 1974. With reference to the proposed rule, Pulitzer and its broadcast licensee show:

1. Pulitzer filed its initial comments dated May 17, 1971 in this proceeding, opposing any restriction upon the common ownership, operation or control of a broadcast facility and a daily newspaper in the same geographic market. Pulitzer and its subsidiary adopt and support the comments filed by the American Newspaper Publishers Association, dated April 2, 1971.

Arguments of the Department of Justice

2. The Department of Justice and others have attempted to urge upon the Commission the adoption of a rule which incorporates the economic concerns of the Department and which expand upon antitrust law and policy as evidenced in the antitrust statutes which the Department enforces. The experience of Pulitzer and KSD-TV is that cross-ownership of newspapers and broadcast media in St. Louis has been beneficial to the

public as well as the licensees. Pulitzer's broadcasting background is, in addition to St. Louis, in Albuquerque, New Mexico, and Tucson, Arizona. The catalogue of technological and creative advances produced through cross-ownership is lengthy, and includes the obvious capability to underwrite developing but temporarily unprofitable innovations in either broadcast or print media by shared profits and losses. In this connection we adopt and incorporate herein Part 1 of the Further Comments of the Evening News Association et al., dated May 1, 1974, pages 3 to 10, particularly to the effect that the Department of Justice's emphasis on antitrust and antimerger criteria must be weighed against the Commission's broad responsibility to maintain the best available broadcasting service and that in the absence of any showing of actual harm resulting from newspaper ownership of "colocated" TV stations, the Commission should not disqualify the one class of licensees and potential licensees – newspaper publishers – "who are by experience, style, and professional qualification the most competent by nature to produce the quality of broadcast service to the public which the Commission seeks . . . ." (*Id.* at 10.) We also point to the recent statements of the House Committee on Interstate and Foreign Commerce:

> ". . . (I)t is unfair and unsound to oust a broadcast licensee on grounds of cross-ownership . . . when the license was granted to it with full awareness of the cross-ownership. . . .
>
> "Notwithstanding the broad prohibition stated in paragraph 34 (of the Further Notice of Proposed Rule Making, adopted March 25, 1970), the committee is of the view that the Commission, in connection with any rules it may adopt, could take into account, among other things, such

> factors as the size of the market in question; the other interests of the ownership; the number of broadcast stations in the market; the other communications media, such as newspapers and cable systems in the market; the extent to which other broadcast signals are received in the market, the circulation of newspapers in the market which are published outside thereof; and the extent which there is concentration of media control as reflected by various other factors." (H. R. Rep. No. 93-961, 93d Cong. 2d Sess. 19 (1974))[1]

3. The petitions filed by the Department of Justice asking the Commission to deny renewal applications for KSD and KSD-TV and for KTVI(TV) in St. Louis and similar petitions for other stations similarly situated demonstrate the unfairness of the Department's position. The Department has consciously avoided any allegation of wrongdoing or less than superior broadcasting performance by licensees in these cases with a view to obtaining a *per se* rule that ownership of a TV broadcasting station by a local newspaper publisher is in itself unlawful without more. We attach as Exhibits 1 and 2 the Department's Petition and the Opposition of Pulitzer and its subsidiary in which, we submit, we have shown to the point of demonstration that the Department of Justice has in that proceeding attempted to do indirectly what it cannot do directly and to apply the antitrust laws to circumstances which are clearly outside the intent and scope of the language of those laws. The Commission has the authority, and has exercised that authority in the past, to remedy any

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[1]The bill reported by the House Committee was overwhelmingly passed by the House and sent to the Senate on May 1, 1974.

danger which might arise from an undue concentration of economic power *accompanied by abusive competitive practices* in the context of adjudicatory proceedings at renewal time or upon order to show cause during the renewal term. In addition, the Department may initiate a plenary and separate antitrust action at any time in its sole discretion. (*See* Opposition (Ex. 2), pp. 56-58.). Thus, the Commission and the Department already possess sufficient authority under the Act to discover and subject to administrative sanction any broadcaster who does not abide by the minimum standards of competitive conduct in the market place. We believe that the Commission's existing policies and procedures have been effective to prevent harm to the public interest, and the Commission has been assiduous in exercising that authority. There has been no showing to the contrary.

4. Aside from the predominant questions of broadcast communications policy for which the Commission has exclusive jurisdiction under the Communications Act of 1934 (47 U.S.C. §§301-330), "the Department [of Justice], not the Commission, has the primary responsibility by use of its customary procedures under the antitrust laws to guarantee that competition remains free of unlawful restraints, monopolies, monopolization, mergers, and acquisitions." (Opposition (Ex. 2), p. 39; *see generally* Opposition (Ex. 2), pp. 37-42.) These laws have been carefully prescribed and limited in their application by the courts.

5. The Department now seeks, however, to have the Commission adopt and apply concepts of the antitrust laws which go far beyond the intent of Congress in enacting those laws. As shown in our Opposition, Clayton Act §7 (15 U.S.C. §18) only applies to

mergers or stock or asset acquisitions and the statute therefore is untenable with respect to Pulitzer's broadcasting operations in St. Louis where Pulitzer pioneered in radio broadcasting in 1922 with KSD and in 1947 with KSD-TV. Expansion by internal growth has been favored under the antitrust laws and this has generally been the means by which local newspaper publishers obtained their broadcast licenses. Sherman Act §2 (15 U.S.C. §2) requires not only a showing of monopoly power in the relevant market by the defendant, but also an acquisition or maintenance of that power by unlawful means. (Ex. 2, pp. 46-58.). While the Commission should take into consideration the effect of the antitrust laws in its broadcast licensing function, that duty should persuade the Commission not to adopt a rule, in Pulitzer's case as well as others, condemning its operation of two broadcast stations in St. Louis from 1922 and 1947 which resulted from internal growth and in consonance with antitrust law and policy.[2]

6. As a corollary of its attempt to establish a *per se* cross-ownership rule, the Department ignores the Congressional intent evidenced by the Newspaper Preservation Act (15 U.S.C. §§1801-05), by requesting the Commission to consider the alleged anticompetitive effect of joint newspaper operating arrangements in various cities, such as St. Louis. This same position was urged in *Chronicle Broadcasting Co.*, 40 F.C.C. 2d 775,

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[2]If the proposed rule were adopted, Pulitzer and its broadcasting subsidiary and others would, of course, retain the right, guaranteed by the *United States v Storer Broadcasting Co.*, 351 U.S. 192 (1956), to request an adjudicatory hearing on the application or waiver of such rule in light of their operation of these stations in close compliance with antitrust law and policy.

795 (1973). The Commission noted that these arrangements and the Act were adopted to preserve the existence of at least two or more daily newspapers in twenty-two cities, by permitting the efficient use of joint production facilities and certain joint commercial activities, and held that consideration of these publishing arrangements to evidence over-concentration of ownership is improper under the Newspaper Preservation Act. In adopting any rule, it is suggested that the Commission carry this principle into the rule so that operation under a joint newspaper arrangement pursuant to the Newspaper Preservation Act may not be considered for purposes of the rule. (*See* Opposition (Ex. 2), pp. 59-71.)

7. In light of the public interest standard of the Communications Act and the General antitrust policies subsumed under that standard, and only cross-ownership rule that appears within the limits of the Commission's authority is that suggested by the Supreme Court in a dictum in *United States v. Radio Corp. of America,* 358 U.S. 334, 351-52 (1959), barring the publisher of the sole newspaper in an area from acquiring the sole TV or radio station in the same area. Indeed, the Department's Petition (Ex. 1, p. 7) relies heavily upon this dictum. Only two years ago, for example, the Commission permitted the transfer of a standard broadcast license to the publisher of two daily newspapers in Festus and Crystal City, Missouri, within the urban St. Louis market, pointing out that there are two daily newspapers and two standard broadcast stations in Festus in addition to area weekly newspapers and other broadcast media serving Festus". *United Broadcasting, Inc.*, 36 F.C.C. 2d 695, 698-99 (1972). The extension of any *per se* rule forbidding cross-

ownership in a city where there are presently two or more VHF-TV stations or two or more daily newspapers would by no means assure that the new operator of the divested TV license would be someone equally qualified, in other respects, to the present newspaper publisher licensee. In fact, the contrary might be true. As an example of this and the positive benefits of newspaper ownership, we cite two examples based on a review of experience in Tucson, Arizona. As the Commission is aware, Pulitzer was required to divest KVOA-TV, Tucson, as a result of a consent order which Pulitzer entered into when it acquired the *Arizona Star,* one of the two Tucson daily newspapers. The reports of the American Research Bureau show that the average share of audience for local news programming on KVOA-TV dropped significantly after new owners acquired the station from Pulitzer. On the other hand, television station KOLD-TV in Tucson, owned by the *Evening News Association,* a non-local newspaper group and the licensee of WWJ-TV, Detroit and other stations, increased markedly during the same period, November, 1972 to March, 1974.[3] This suggests the possibility, which would have to be based on a broad survey made by the Commission, that the benefits of newspaper ownership – local and non-local – should be fully considered.

9. In any event, as will appear below, the advent and growth of cable TV may make it inappropriate and unfair at this time to adopt a rule, even as suggested above, requiring wholesale divestiture which may not, in the light of probable future events, have been necessary.

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[3] ARB, Program Audiences, Average TV Household Share, November, 1972 and February-March, 1974.

10. The 1970 Further Notice of the Commission, ordering further consideration of the issue of cross-ownership of daily newspaper and TV stations in the same market, was based on the consensus of factual studies in the record "that the public looks primarily to these two sources (daily newspapers and TV) for its news and information on public affairs". (22 F.C.C. 2d at 344.) This public predilection was found by these studies to have existed at least as early as the fifties. (*Ibid.*) Against this historic pattern of TV and newspaper dominance of the communications media, a recent Stanford Research Institute study projects the growth of cable-TV and over-the-air-pay-TV to 1.5 million households in 1976 and more than 25 million in 1985. "According to the study, the over-the-air form of pay-TV is expected principally to develop in the top 50 markets during the nineteen seventies, while cable-TV markets would predominate in the rest of the country". (*New York Times,* April 17, 1974, reporting on a Stanford Research Institute study entitled *The Outlook for Cable Television* (1974). The advent of cable or pay-TV as the third major medium of communications is also predicted by the Cabinet Committee on Cable Communications in its report entitled *Cable: Report to the President,* submitted January 14, 1974. In the report of this committee, chaired by Clay T. Whitehead, Director of the Office of Telecommunications Policy, it is found that, "Cable has the technical potential to become a communications medium of abundant capacity, with almost a limitless number of channels capable of carrying virtually any kind of communications". (*Id.* at 9). The report also outlines the growth of cable TV "to an industry composed of over 3,000

systems in 1973, connecting almost 8 million households and continuing to grow at a rate of more than ten per cent per year," (*Id.* at 11)

11. The Cabinet Committee's report advocates a different regulatory approach to cable-TV based on the multiplicity of channels. Because of the abundance of channels in cable-TV compared to the number of channels physically available in broadcast TV, the Cabinet Committee advocates a simple legislative solution, namely, the prohibition of integration of the programming and distribution functions of the cable-TV operation. (*Id.* at 22-25)

> "... [I]n the long run, cable development could alter significantly the competitive relationships among the broadcast and print media and the cable industry. It would not consititute economic protectionism to give some consideration to those industries, especially television broadcasting, that would bear the brunt of technological innovation and competition from a successful cable industry. Broadcasters and publishers should have an opportunity to own or invest in cable systems in the communities they serve without being required to divest themselves of their present media holdings in those markets. Although broadcast stations would thus be allowed to a limited extent to engage in both program origination and cable operation in the same community, they would still be bound by all the restrictions on program control placed on cable operations. There would, of course, be no prohibition against broadcasters or newspaper publishers owning cable systems outside the markets they already serve with these other media outlets.
>
> "It is reasonable to expect that most broadcasters and publishers would prefer to offer

programming on cable channels that they lease rather than to own cable systems, and that should be allowed. On balance, the separations policy, with its assurance of access by channel users, considerably lessens any potential harm which may arise from the cross-media ownership of cable systems. Therefore, no special restrictions on such cross-ownership appear to be necessary. Excessive concentrations of cross-media ownership would, however, be prohibited by normal operation of the antritrust laws as would excessive concentration of control over broadcast-newspaper-cable channel content." (*Id.* at 32)[4]

Since all indications point to a growing multiplicity of mass-media communications voices in the near future, whether or not the Cabinet Committee's recommendations are adopted, it is suggested that caution should be exercised in the adoption of a rule disqualifying a whole class of the most qualified and experienced broadcasters.

Adverse Effects of Barring Cross-Ownership

12. A complete separation of newspaper and TV ownership in the same locality may lead to a counter-productive antagonism between newspapers and

[4]This report, as well as the Stanford report, confirm the strongly-held view of former Chairman Dean Burch that "providing the regulatory climate which will assure implementation of program origination by CATV systems (including channels for common carrier usage), over-the-air pay-TV, use of satellites for new broadcast and cable networks, and a really properly financed educational service, should be assigned top priority, because that is by far the best and most effective way of obtaining maximum diversity of programming." (22 F.C.C. 2d at 350.)

TV as complementary communications media, contrary to federal communications policy. An analogy may be made to the history and effect of the similar prohibition against common ownership of railroads and truckers, which contributed to mutually destructive competition between these two transportation modes and the decline of the railroads.[5]

13. In light of the complementary nature of the media and the historic development of many TV stations by local newspaper publishers, recognition should be given to the fact that the media are as complementary as they are competitive, and that the erection of a wall between them will deter the cross-semination of ideas and technology. For example, there is talk about electronic cross-country telecommunications between news offices and printing plants (e.g., the *Wall Street Journal* is printed simultaneously with local variations in major cities). Facsimile printing of local newspapers and weather reports through cable-TV in each home is being forecast. If print media and broadcast and cable are separated, the important new technology may be hindered.

[5]Strong criticism has been directed recently at the ICC for its administration of its authority to regulate common ownership of railroads and motor carriers in that the general promotion of intermodal competition deters intermodal coordination and may have helped cause railroad bankruptcies. *See* L. Schwartz, *Free Enterprise and Economic Organization* 261-62 (4th ed. 1972); 2 A. Kahn, *The Economics of Regulation* 264 (1971); Helmetag, *Common Ownership of Rail and Motor Carriers; The Case for the Railroads*, 48 Tex. L. Rev. 889 (1970). If these criticisms of ICC policy are correct, the lesson is obvious: the prohibition of common ownership of newspapers and TV stations may, in overpromoting intermedia competition, also deter intermedia coordination, and lead to the further decline of daily newspapers.

14. If divestiture is not ordered by the Commission and a modified rule were adopted prohibiting new TV-newspaper combinations and requiring the separate sale of such combinations, such modified rule could not be justified unless there were: (1) a sufficient factual record, (2) overriding governmental interests, and (3) lack of practical alternatives, which would justify such a rule. As the House Committee stated, ". . . it is unfair and unsound to oust a broadcast licensee on grounds of cross-ownership. . ." Forced divestiture of either or both licenses of the broadcasting subsidiary would entail severe financial detriment to Pulitzer that cannot be controverted in light of Pulitzer's history of broadcasting operations, subsidized in the early years by its newspaper revenues. And this is equally applicable to a rule which would compel separate sale at some future date. The financial interdependence of Pulitzer's newspaper and broadcasting operations in St. Louis for over fifty-two years has provided a stability which should not be destroyed either by forced divestiture or by separate sale.[6]

15. For the reasons set forth herein, Pulitzer and its subsidiary, after serious study, and based upon many years of experience, believe that the Commission's proposed rule making is contrary to important factual considerations. The proposed rules would be unlawful, unnecessary and adverse to the public interest.

[Certificate of Service Omitted in Printing]

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[6]This point was made most strongly by former Chairman Dean Burch summarizing the view of Commissioner Robert E. Lee "concerning the stability of the newspaper owner – that such an owner does not 'traffick' and does a better job of serving as an outlet for local expression." (22 F.C.C. 2d at 350.)

REPLY COMMENTS OF POST-NEWSWEEK STATIONS, CAPITAL AREA, INC.

[June 17, 1974]

In its Supplemental Comments in this proceeding filed May 15, 1974, the Justice Department contends that a commonly owned television station and newspaper in the same market will charge higher advertising rates than would be charged if they were separately owned. We believe this contention is wrong in theory, and studies recently made by Post-Newsweek Stations (PNS) show that it is without valid factual support.

The principal basis for the Justice Department's contention is a series of theoretical assumptions about newspaper and television advertising – namely, that newspapers and television stations are direct competitors for most of their advertising revenues, that commonly owned newspapers and television stations do not compete with each other, and that such commonly owned media in the same market will have power to control prices regardless of the other competition they face. In its Comments of May 13, 1974, PNS showed why real-world newspapers and television stations do not conform to this theoretical model, even if antitrust theory were controlling as to the public interest under the Communications Act.

To bolster its case, however, the Justice Department has exhumed an econometric study submitted to the Commission in 1970 ("the Owen study"),* which pur-

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*B. M. Owen, "Empirical Results on the Price Effects of Joint Ownership in the Mass Media" (1969), reprinted as Appendix I to J. N. Roose, B.M. Owen, and D. L. Grey, "Economic Issues in Joint Ownership of Newspaper and Television Media," Docket 18110, May 1970.

ported to show that commonly owned newspapers and television stations in the same market charge higher rates. While carefully avoiding endorsement of the methodology or specific conclusions of this study, the Justice Department suggests that the study provides empirical support for the Department's abstract propositions of antitrust theory. The purpose of these Reply Comments is simply to show that, independently of the academic debate over Owen's methodology and the statistical significance of his results, the Owen study does not provide any valid support for the Justice Department's theory of market power.

Television Rates

With respect to television advertising, the Owen study does no more than test the hypothesis that the advertising rates of newspaper-affiliated television stations will be higher than those of other stations. Its conclusion is that the hypothesis is correct on an overall, nationwide average. Assuming *arguendo* that the rates of stations commonly owned with newspapers are in fact higher than those of other comparable stations, it does not follow that it is the newspaper affiliation that causes the higher rates. That proposition could be established only if it were shown that there is no comparable correlation between higher rates and any other possible causes. The Owen study attempts to take account of the effect of the VHF channel assignments, network affiliation, and high income markets, but it does not take account of any other likley causal factors, including delivered audience – the most likely cause of all.

PNS starts from a different premise: Higher advertising rates in competitive markets reflect advertiser preferences. Advertisers will pay more, above all, for (1) the station in

the market which reaches the largest audience. In addition, advertisers tend to prefer (2) CBS affiliates, which typically have long been the strongest stations in particular markets and have long carried the largest number of programs with high audience recognition levels; (3) stations which were the first on the air in their market, and which tend therefore to have greater prestige and greater audience identification in the market than newer stations; and (4) low-band VHF stations, which provide a higher quality signal over a greater area and hence have greater audience potential than highband VHF stations.

PNS has tested these hypotheses in a simple non-econometric study of the stations with the highest published 30-second spot rates in the top 50 markets. The results are set forth in Appendix A. The study reveals strong correlations between each of the four characteristics tested and the highest advertising rates. (See Tables 2 and 3). Three-fourths of the highest-rate stations had more than one of the characteristics. Over half had three of the four! These correlations make clear that the higher advertising rates for newspaper-affiliated stations found by Owen on the basis of a national average cannot be accepted as persuasive evidence of any causal relationship between higher rates and newspaper cross-ownership.

The PNS study also shows that the correlations with characteristics related to advertiser preference are essentially the same among the highest rate stations commonly owned with newspapers as among other highest-rate stations. (See Table 3). Indeed, the characteristics of highest delivered audience, first-station status, and CBS affiliation are somewhat more common among the highest-rate newspaper-affiliated stations. Thus, the correlations found by the PNS study between the highest advertising rates and the factors which practical business-

men in the industry would expect to cause such rates obtain independently of newspaper cross-ownership and cannot be explained by such ownership. This result belies the Justice Department's contention that common ownership with a newspaper causes higher rates.

The PNS study has certain obvious limitations, and does not purport to be definitive.* As is recognized in the Owen study, the readily utilizable measures of comparable advertising rates for television stations are "far from perfect." (Owen study, p. 4) The rate PNS used – the highest published 30-second spot rate – avoids the complexities of rate cards and is likely to be more representative of a station's overall rates than the prime-time hour program rates used by Owen; but like Owen's measure in particular cases this rate may be atypical. Nonetheless, the limited PNS study is fully sufficient to establish the basic point that the Owen study in no way confirms the Department's theory.

In addition, it should be noted that neither the Owen study nor the PNS study addresses the question of the correct explanation for any correlation between cross-ownership and higher rates. One plausible explanation is that newspaper-owned stations were frequently the first station in their market. Another possibility is that newspaper-affiliated stations provide better quality service than other stations and therefore typically have larger audience shares. These possibilities are further illustrations of the essential irrelevance of the Owen study to the

*The study measures delivered audience by the ARB prime time share, since this rating is most compatible with the advertising rate measure used. The delivered audience ratings do not take account of demographic distribution. The study is limited to the top 50 markets, and does not take account of variations of the size of those markets or of the number of stations in each market.

Justice Department's theory that common ownership of a newspaper and a television station in the same market confers anti-competitive market power over prices.

Newspaper Rates

The Owen study also purports to show that newspapers under common ownership with television stations in the same market charge more for advertising than other newspapers. Like Owen's conclusion as to television rates, this showing does not establish a causal relationship, even assuming that its methodology is sound. But in the case of newspapers, the conclusion itself is advanced so gingerly, and can be so readily tested at least on a small scale, that it seemed appropriate to inquire into the validity of the study's results themselves. Indeed, Owen himself indicates that the hypothesis that newspapers under common ownership with televisions stations charge more than other papers is not a "strong" hypothesis, and the conclusion of his study is only that the results "can be interpreted as implying on average" a higher advertising rate for cross-owned newspapers. (Owen, study, pp. 8-9).

PNS undertook a simple study of newspaper advertising rates in major markets to see where there is in fact a correlation between common ownership with a television station and high rates. The study was limited to the top 20 markets by considerations of time and resources, but the results – set forth in Appendix B – are unequivocal. Not only is there no positive correlation between high newspaper advertising rates and television cross-ownership in those markets, but on the whole cross-owned newspapers had a markedly *lower* average rate than newspapers unrelated to television stations!

Specifically, the PNS study compared the lowest milline rates of the 50 metropolitan daily newspapers in the top 20 markets with circulation in excess of 100 thousand.* The milline rate, calculated by dividing the line rate by the net paid circulation and multiplying by one million.** is the rate most commonly used in the industry. This comparison revealed that the 26 cross-owned papers surveyed have an average milline rate of $4.51. The 24 papers without television cross-ownership have an average rate of $4.78. Thus, the separately owned stations as group charge about 6 percent *more* than cross-owned stations. The results are virtually the same if the eight stations in the top half of the rate range for the 50 papers – *i.e.*, stations with rates much higher than those of most papers – are eliminated. For the remaining 42 papers grouped in the bottom half of the range, the average milline rate is $4.33. The papers commonly owned with television stations are on the low side of the average, with an average of $4.23. The papers without such common ownership are on the high side of $4.45.

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*Where two or more different papers are published by the same company, or are published under a joint operating agreement, they are counted as separate papers.

**The study used the actual 5,000-line contract rates effective as of April, 1974, and the actual daily net-paid circulation (excluding Saturdays) as of September 30, 1973. The data source is the April 12, 1974 issue of "Newspaper Rates and Data," published by the Standard Rate and Data Service, Inc.

In the case of "all-day" papers, the data used was for the morning or evening edition having the lowest milline rate, since that rate is as accessible to the public as the higher rate edition. For the three such papers whose ad linage is sold only for all-day circulation, however, the combined morning and evening circulation was used in calculating the milline rate.

These results suffice to show that, at the most elementary level, the results of the Owen study cannot be relied on to buttress the Justice Department's abstractions.

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APPENDIX A

STUDY OF ADVERTISING RATES OF TELEVISION STATIONS IN THE TOP 50 MARKETS IN RELATION TO STATION CHARACTERISTICS LIKELY TO CAUSE ADVERTISERS TO PAY HIGHER ADVERTISING RATES

Table 1: Advertising Rates and Advertiser-Preference Characteristics of Television Stations in the Top 50 Markets – Complete Data.

Table 2: Advertiser Preference Characteristics of Stations in Top 50 Markets with Highest Advertising Rate in Market

Table 3: Prevalence of Advertiser-Preference Charactistics Among Stations in Top 50 Markets with Highest Advertising Rate in Market

TABLE 1

ADVERTISING RATES AND ADVERTISER-PREFERENCE CHARACTERISTICS OF TELEVISION STATIONS IN TOP 50 MARKETS[a] -- COMPLETE DATA

(* = station commonly owned with newspaper in the same market)

Market	Station[b]	Air-date	Affiliation	Channel	Highest[c] Published 30" Rate	Prime[d] Share of Homes (%)
New York	WABC	1949	ABC	7	$5800	25
	WCBS	1941	CBS	2	8000	31
	WNBC	1941	NBC	4	6000	28
	WNEW	1940	Ind	5	1500	9
	WOR	1949	Ind	9	1200	4
	*WPIX	1948	Ind	11	1225	2
Los Angeles	KABC	1949	ABC	7	3600	27
	KCOP	1948	Ind	13	600	2
	KHJ	1948	Ind	9	750	3
	KMEX	1962	Ind	34	150	1
	KNBC	1949	NBC	4	4300	29
	KNXT	1950	CBS	2	3750	29
	KTLA	1947	Ind	5	600	4
	KTTV	1949	Ind	11	600	6
Chicago	WBBM	1946	CBS	2	6000	31
	*WFLD	1966	Ind	32	390	2
	*WGN	1948	Ind	9	800	7
	WLS	1943	ABC	7	3500	28
	WMAQ	1948	NBC	5	3200	30
	WSNS	1970	Ind	44	150	1

a Based on ARB ADI TV HH Rank.
b Commercial stations only, excluding those not reportable in ARB.
c SRDS 5/15/74.
d Feb/March 1974 ARB, Mon-Sun 8-11PM NYCT.

TABLE I (continued)

ADVERTISING RATES AND ADVERTISER-PREFERENCE CHARACTERISTICS OF TELEVISION STATIONS IN TOP 50 MARKETS[a] -- COMPLETE DATA

(* = station commonly owned with newspaper in the same market)

Market	Station[b]	Air-date	Affiliation	Channel	Highest[c] Published 30" Rate	Prime[d] Share of Homes (%)
Philadelphia	KYW	1941	NBC	3	2000	27
	WCAU	1948	CBS	10	2100	32
	WKBS	1965	Ind	48	300	3
	WPHL	1965	Ind	17	250	4
	WPVI	1947	ABC	6	3000	31
	WTAF	1965	Ind	29	175	2
Boston	WBZ	1948	NBC	4	2000	25
	WCVB	1972	ABC	5	2700	28
	*WKBG	1966	Ind	56	300	3
	WNAC	1948	CBS	7	2400	31
	WSBK	1964	Ind	38	250	5
San Francisco	KHBK	1958	Ind	44	275	2
	KGO	1949	ABC	7	2500	27
	KPIX	1948	CBS	5	2000	30
	*KRON	1949	NBC	4	2500	28
	KTVU	1958	Ind	2	575	7
Detroit	CKLW	1954	Ind	9	$ 400	2
	WJBK	1948	CBS	2	1950	30
	WKBD	1965	Ind	50	250	6
	*WWJ	1947	NBC	4	2000	32
	WXYZ	1948	ABC	7	1600	30
Cleveland	*WEWS	1947	ABC	5	1600[e]	29
	WJW	1949	CBS	8	1500	33
	WKBF	1968	Ind	61	150	2
	WKYC	1948	NBC	3	1650	30

b Commercial stations only, excluding those not reportable in ARB.
c SRDS 5/15/74.
d Feb/March 1974 ARB, Mon-Sun 8-11PM NYCT.
e Specials, prime is $1350.

TABLE I (continued)

ADVERTISING RATES AND ADVERTISER-PREFERENCE CHARACTERISTICS OF TELEVISION STATIONS IN TOP 50 MARKETS[a] -- COMPLETE DATA

(* = station commonly owned with newspaper in the same market)

Market	Station[b]	Air-date	Affiliation	Channel	Highest[c] Published 30" Rate	Prime[d] Share of Homes (%)
Washington	WDCA	1966	Ind	20	225[f]	2
	*WMAL	1947	ABC	7	1500[g]	25
	WRC	1947	NBC	4	1500	25
	*WTOP	1949	CBS	9	2300	30
	WTTG	1947	INd	5	550	12
Pittsburgh	KDKA	1949	CBS	2	1200	39
	WIIC	1957	NBC	11	1200	20
	WTAE	1958	ABC	4	1000	27
Dallas/ Fort Worth	*KDFW	1949	CBS	4	1350	33
	KTVT	1955	Ind	11	220	8
	*WBAP	1948	NBC	5	1500	29
	*WFAA	1949	ABC	8	1760	28
St. Louis	KDNL	1969	Ind	30	200	3
	KMOX	1954	CBS	4	2160	39
	KPLR	1959	Ind	11	200	5
	*KTVI	1957	ABC	2	1100	24
	*KSD	1947	NBC	5	775	30
Minneapolis/ St. Paul	KMSP	1955	ABC	9	675	25
	KSTP	1948	NBC	5	700	29
	*WCCO	1949	CBS	4	750	33
	WTCN	1953	Ind	11	200	9
Houston	KHOU	1953	CBS	11	1000	32
	KHTV	1967	Ind	39	135	3
	*KPRC	1949	NBC	2	1100	33
	KTRK	1954	ABC	13	1000	30
	KVRL	1971	Ind	26	100	1

b Commercial stations only, excluding those not reportable in ARB.
c SRDS 5/15/74.
d Feb/March 1974 ARB, Mon-Sun 8-11PM NYCT.
f Children's programming, adult is $200.
g Estimating range for prime shows a high of $1850.

TABLE I (continued)

ADVERTISING RATES AND ADVERTISER-PREFERENCE CHARACTERISTICS OF TELEVISION STATIONS IN TOP 50 MARKETS[a] -- COMPLETE DATA

(* = station commonly owned with newspaper in the same market)

Market	Station[b]	Air-date	Affiliation	Channel	Highest[c] Published 30" Rate	Prime[d] Share of Homes (%)
Miami	WCIX	1967	Ind	6	400	3
	WCKT	1956	NBC	7	850	29
	WLTV	1967	Ind	23	100	5
	WPLG	1961	ABC	10	1200	24
	WTVJ	1949	CBS	4	1800	37
Atlanta	WAGA	1949	CBS	5	$1000	35
	*WSB	1948	NBC	2	457[h]	29
	WTCG	1967	Ind	17	250	5
	WXIA	1951	ABC	11	800	29
Seattle/ Tacoma	KING	1948	NBC	5	1100	36
	KIRO	1958	CBS	7	625	27
	KOMO	1953	ABC	4	1000	32
	KSTW	1953	Ind	11	170	2
	KTVW	1953	Ind	13	140	1
Indianapolis	WISH	1954	CBS	8	900	34
	WLW-I	1957	ABC	13	750	25
	WRTV	1949	NBC	6	750	27
	*WTTV	1949	Ind	4	200	8
Baltimore	*WBAL	1948	NBC	11	1100	29
	WBFF	1971	Ind	45	150	2
	WJZ	1948	ABC	13	1000	28
	*WMAR	1947	CBS	2	1100	34

b Commercial stations only, excluding those not reportable in ARB.
c SRDS 5/15/74.
d Feb/March 1974 ARB, Mon-Sun 8-11PM NYCT.
h Prime estimating range $485-600.

TABLE I (continued)

ADVERTISING RATES AND ADVERTISER-PREFERENCE CHARACTERISTICS OF TELEVISION STATIONS IN TOP 50 MARKETS[a] -- COMPLETE DATA

(* = station commonly owned with newspaper in the same market)

Market	Station[b]	Air-date	Affiliation	Channel	Highest[c] Published 30" Rate	Prime[d] Share of Homes (%)
Tampa/St. Petersburg	*WFLA	1955	NBC	8	550	35
	WLCY	1965	ABC	10	400	16
	WTOG	1969	Ind	44	120	3
	WTVT	1955	CBS	13	550	41
	WXLT	1971	Ind	40	63	2
Hartford/ New Haven	WFSB	1957	CBS	3	2045	36
	WHCT	1959	Ind	18	65	1
	WHNB	1953	NBC	30	420	16
	WTNH	1948	ABC	8	1000	23
Kansas City	KBMA	1970	Ind	41	130	4
	KCMO	1953	CBS	5	690	38
	KMBC	1953	ABC	9	750	28
	WDAF	1949	NBC	4	775	27
Cincinnati	*WCPO	1949	CBS	9	700	38
	WKRC	1949	ABC	12	700	25
	WLW-T	1948	NBC	5	700	28
	WXIX	1968	Ind	19	160	4
Milwaukee	WISN	1954	CBS	12	600	30
	WITI	1956	ABC	6	600	29
	*WTMJ	1947	NBC	4	650	31
	WVTV	1959	Ind	18	125	6
Sacramento/ Stockton	KCRA	1955	NBC	3	$1000	32
	*KOVR	1954	ABC	13	600	28
	KXTV	1955	CBS	10	245[i]	29
Portland, Ore.	KATU	1962	ABC	2	700	27
	KGW	1956	NBC	8	550	29
	*KOIN	1953	CBS	6	1000	33
	KPTV	1952	Ind	12	225	8

b Commercial stations only, excluding those not reportable in ARB.
c SRDS 5/15/74.
d Feb/March 1974 ARB, Mon-Sun 8-11PM NYCT.
i No prime rates published.

TABLE I (continued)

ADVERTISING RATES AND ADVERTISER-PREFERENCE CHARACTERISTICS OF TELEVISION STATIONS IN TOP 50 MARKETS[a] -- COMPLETE DATA

(* = station commonly owned with newspaper in the same market)

Market	Station[b]	Air-date	Affiliation	Channel	Highest[c] Published 30" Rate	Prime[d] Share of Homes (%)
Providence	WJAR	1949	NBC	10	550	25
	WPRI	1955	CBS	12	540	27
	WTEV	1963	ABC	6	500	24
Buffalo	*WBEN	1948	CBS	4	850	33
	WGR	1954	NBC	2	750	29
	WKBW	1958	ABC	7	825	29
	WUTV	1970	Ind	29	140	2
Denver	KBTV	1952	ABC	9	350	29
	MKGH	1953	CBS	7	590	29
	KOA	1953	NBC	4	550	31
	KWGN	1966	Ind	2	140	9
Nashville	WLAC	1954	CBS	5	450	36
	WNGE	1953	ABC	2	370	25
	WSM	1950	NBC	4	395	33
Columbus, O.	*WBNS	1949	CBS	10	500	40
	WLW-C	1949	NBC	4	400	29
	WTVN	1949	ABC	6	475	26
Memphis	*WMC	1948	NBC	5	350	31
	WREC	1956	CBS	3	370	35
	WHBQ	1953	ABC	13	270	25
San Diego	KCST	1965	ABC	39	165[i]	21
	KFMB	1949	CBS	8	650	32
	KGTV	1953	NBC	10	538	32
	XETV	1960	Ind	12	69	5

b Commercial stations only, excluding those not reportable in ARB.
c SRDS 5/15/74.
d Feb/March 1974 ARB, Mon-Sun 8-11PM NYCT.

TABLE I (continued)

ADVERTISING RATES AND ADVERTISER-PREFERENCE CHARACTERISTICS OF TELEVISION STATIONS IN TOP 50 MARKETS[a] -- COMPLETE DATA

(* = station commonly owned with newspaper in the same market)

Market	Station[b]	Air-date	Affiliation	Channel	Highest[c] Published 30" Rate	Prime[d] Share of Homes (%)
Charlotte	WBTV	1949	CBS	3	1000	42
	WCCB	1964	ABC	18	150	14
	WRET	1967	Ind	36	85	2
	WSOC	1957	NBC	9	440	29
New Orleans	WDSU	1948	NBC	6	450	33
	WGNO	1967	Ind	26	75	2
	WVUE	1959	ABC	8	550	24
	WWL	1957	CBS	4	525	41
Louisville	WAVE	1948	NBC	3	$ 375	33
	WDRB	1971	Ind	41	65	6
	*WHAS	1950	CBS	11	650	36
	WLKY	1961	ABC	32	350	18
Phoenix	KOOL	1953	CBS	10	400	35
	KPHO	1949	Ind	5	300	7
	KTAR	1953	NBC	12	500	26
	KTVK	1955	ABC	3	382	28
Grand Rapids/Kalamazoo						
	WKZO	1950	CBS	3	525	35
	WOTV	1951	NBC	8	400	30
	WUHQ	1971	ABC	41	100	6
	WZZM	1962	ABC	13	300	20
Oklahoma City	KOCO	1954	ABC	5	500	28
	KWTV	1953	CBS	9	435	33
	*WKY	1949	NBC	4	450	33
Greenville/Asheville/Spartanburg						
	*WFBC	1953	NBC	4	490	35
	WLOS	1954	ABC	13	300	25
	WSPA	1956	CBS	7	430	33

b Commercial stations only, excluding those not reportable in ARB.
c SRDS 5/15/74.
d Feb/March 1974 ARB, Mon-Sun 8-11PM NYCT.

TABLE I (continued)

ADVERTISING RATES AND ADVERTISER-PREFERENCE CHARACTERISTICS OF TELEVISION STATIONS IN TOPE 50 MARKETS[a] -- COMPLETE DATA

(* = station commonly owned with newspaper in the same market)

Market	Station[b]	Air-date	Affiliation	Channel	Highest[c] Published 30" Rate	Prime[d] Share of Homes (%)
Dayton	*WHIO	1949	CBS	7	725	41
	WKEF	1964	ABC	22	395	18
	WLW-D	1949	NBC	2	430	27
Albany/Schenectady/Troy						
	WAST	1956	ABC	13	400	23
	WRGB	1939	NBC	6	500	38
	WTEN	1953	CBS	10	400	37
Charleston/Huntington						
	WCHS	1954	CBS	8	300	30
	WHTN	1955	ABC	13	350	22
	WSAZ	1949	NBC	3	375	39
Wilkes Barre/Scranton						
	WBRE	1953	NBC	28	400	30
	WDAU	1953	CBS	22	400	30
	WNEP	1953	ABC	16	375	22
Harrisburg/Lancaster/York						
	*WGAL	1949	NBC	8	$ 395	33
	WHP	1953	CBS	21	185	15
	WLYH	1957	CBS	15	130	7
	WSBA	1952	CBS	43		5
	*WTPA	1953	ABC	27	225	17
Norfolk	WAVY	1957	NBC	10	390	27
	*WTAR	1950	CBS	3	470	42
	WVEC	1953	ABC	13	375	30
	WYAH	1961	Ind	27	100	1

b Commercial stations only, excluding those not reportable in ARB.
c SRDS 5/15/74.
d Feb/March 1974 ARB, Mon-Sun 8-11PM NYCT.

TABLE I (continued)

ADVERTISING RATES AND ADVERTISER-PREFERENCE CHARACTERISTICS OF TELEVISION STATIONS IN TOPE 50 MARKETS[a] -- COMPLETE DATA

(* = station commonly owned with newspaper in the same market)

Market	Station[b]	Air-date	Affiliation	Channel	Highest[c] Published 30" Rate	Prime[d] Share of Homes (%)
Orlando/Daytona Beach						
	WDBO	1954	CBS	6	500	36
	WESH	1956	NBC	2	330	35
	WFTV	1958	ABC	9	330	27
Birmingham	*WAPI	1949	NBC	13	325	33
	WBMG	1965	CBS	42	300	18
	WBRC	1949	ABC	6	500	42
Salt Lake City						
	KCPX	1948	ABC	4	450	38
	KSL	1949	CBS	5	250	31
	KUTV	1954	NBC	2	360	29
San Antonio						
	*KENS	1950	CBS	5	375	35
	KSAT	1957	ABC	12	410	30
	KWEX	1955	Ind	41	80	5
	WOAI	1949	NBC	4	370	27

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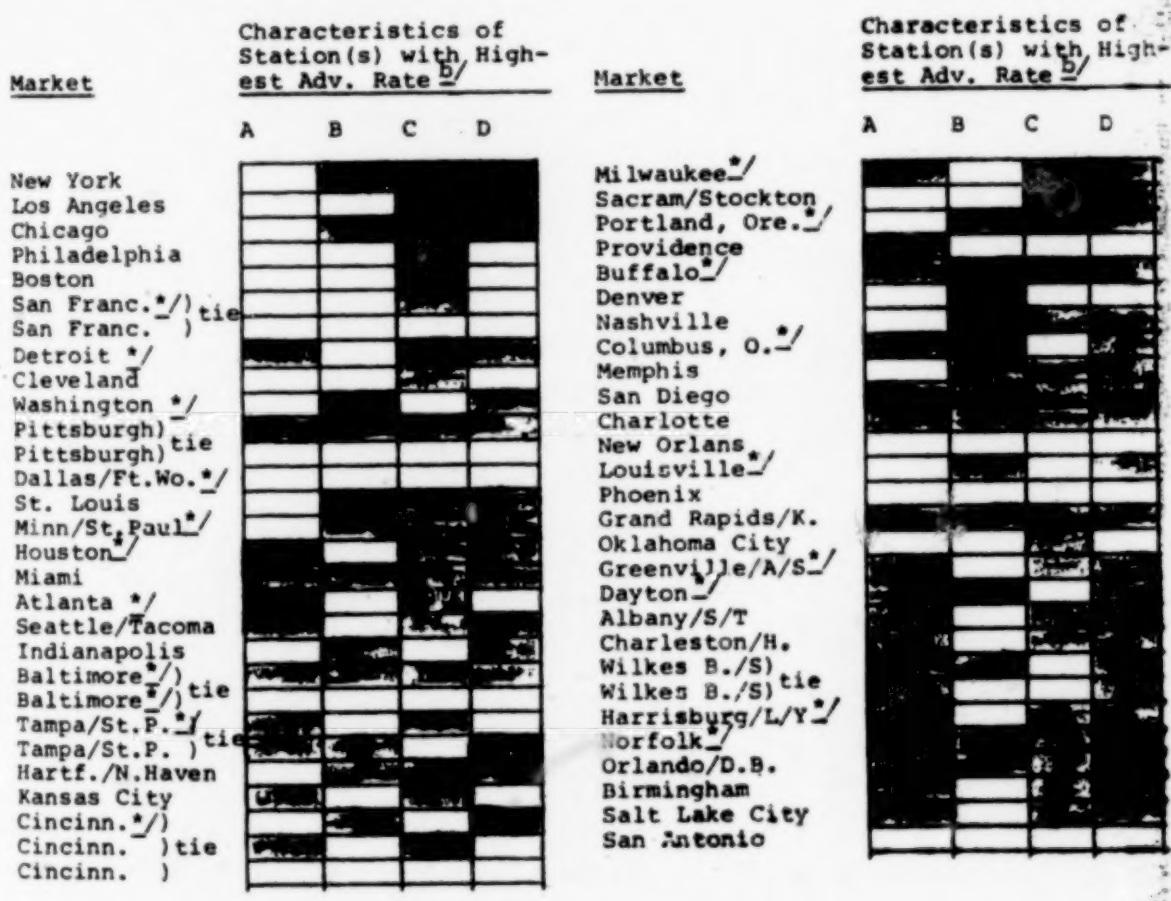
b Commercial stations only, excluding those not reportable in ARB.
c SRDS 5/15/74.
d Feb/March 1974 ARB, Mon-Sun 8-11PM NYCT.

Table 2

ADVERTISER-PREFERENCE CHARACTERISTICS OF STATIONS IN TOP 50 MARKETS [a] WITH HIGHEST ADVERTISING RATE IN MARKET

(* = station commonly owned with newspaper in the same market)

A = first station on air in market. B = CBS affiliate.
C = low band station or lowest channel in market. D = highest share of audience in market.



a Based on ARB ADI TV HH Rank.
b Based on Highest Published 30" Rate.

SOURCE: Table 1 (ties credited to both stations).

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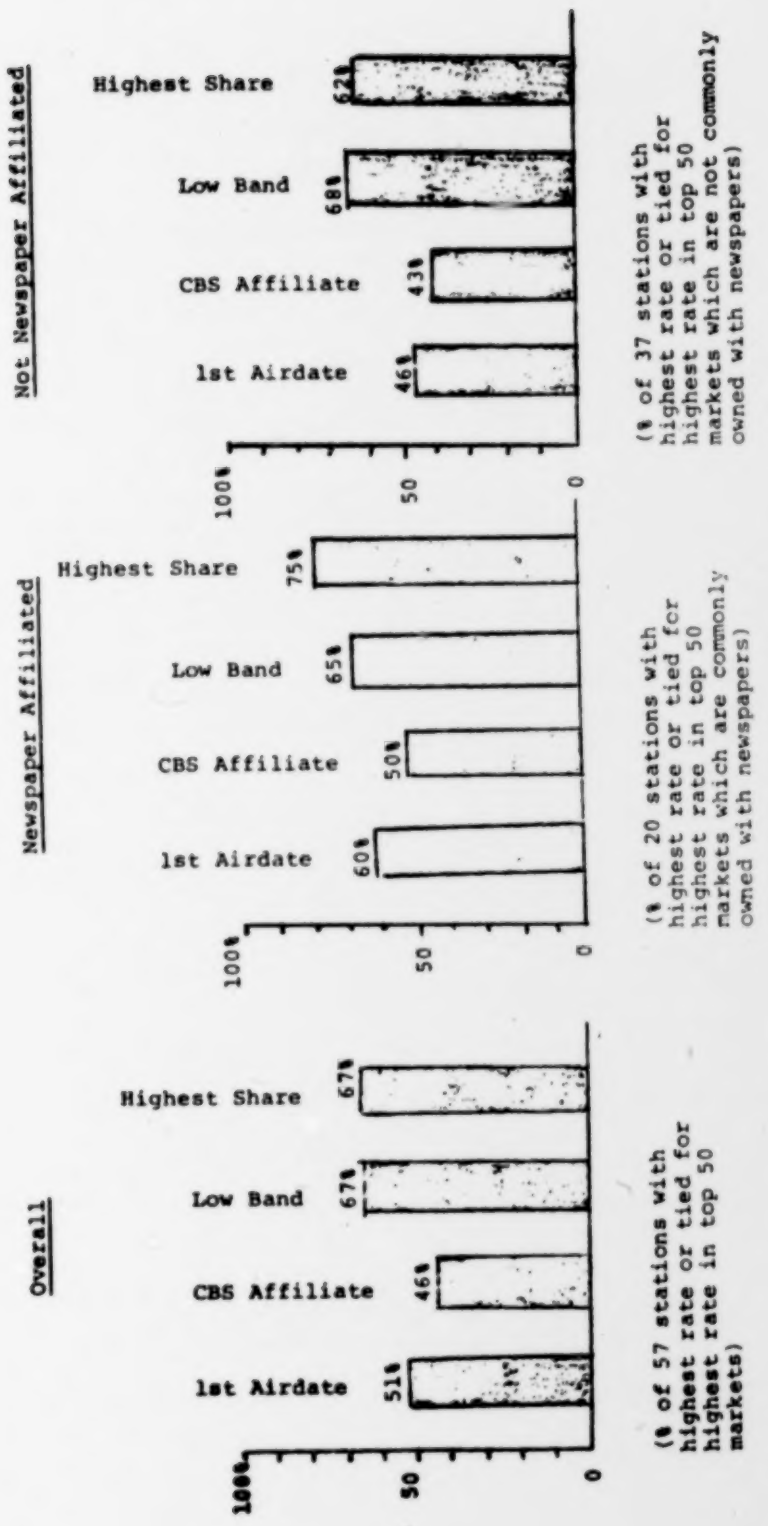
Table 3

PREVALENCE OF ADVERTISER-PREFERENCE CHARACTERISTICS AMONG STATIONS IN TOP 50 MARKETS WITH HIGHEST ADVERTISING RATE IN MARKET

(Source: Table 2)



APPENDIX B

STUDY OF ADVERTISING RATES OF METROPOLITAN DAILY NEWSPAPERS IN THE TOP 20 MARKETS IN RELATION TO COMMON OWNERSHIP WITH A TELEVISION STATION IN THE SAME MARKET

Table 4: Advertising Rates and Commonly Owned Television Stations for Metropolitan Daily Newspapers (Circulation 100,000 or more) in the Top 20 Markets

Table 5: Newspaper Advertising Rates and Television Cross-Ownership: Summary of Findings

TABLE 4

ADVERTISING RATES AND COMMONLY OWNED TELEVISION STATIONS OF METROPOLITAN DAILY NEWSPAPERS (CIRCULATION 100,000 OR MORE) IN THE TOP 20 MARKETS[a]

Newspaper (Ranked in Order of Milline Rate Starting with Lowest	City and Market Rank	Net Paid Daily Circ.	Daily 5,000 Line Rate	Milline Rate	Commonly Owned TV Station in Same Market
Times (M)	Los Angeles (2)	1,009,719	$2.68	$2.65	
News (M)	New York (1)	2,107,453	6.56	3.11	WPIX-TV
News (E)	Detroit (7)	682,142	2.27*	3.33	WWJ-TV
Plain Dealer (M)	Cleveland (8)	403,330	1.37	3.40	
Post (M)	Washington (9)	532,806	1.818	3.41	WTOP-TV
Press (E)	Cleveland (8)	373,917	1.33	3.56	WEWS-TV
Star (M)	Indianapolis (17)	231,118	.83	3.59	
Star Telegram (M&E)	Ft. Worth (11)	235,687	.87**	3.69	WBAP-TV
Free Press (M)	Detroit (7)	612,684	2.275	3.71	
Sun-Times (M)	Chicago (3)	567,617	2.16	3.81	WFLD-TV
Today (E)	Chicago (3)	425,089	1.62	3.81	WGN-TV

[a]As defined by ARB in terms of ADI's. For methodology and sources, see text of Comments, pp. 6-7.

*Flat-line applies to 5,000 lines.

**Ad linage sold only for both morning and evening editions.

M – Morning Paper.

E – Evening Paper.

TABLE 4 (continued)

ADVERTISING RATES AND COMMONLY OWNED TELEVISION STATIONS OF METROPOLITAN DAILY NEWSPAPERS (CIRCULATION 100,000 OR MORE) IN THE TOP 20 MARKETS[a]

Newspaper (Ranked in Order of Milline Rate Starting with Lowest	City and Market Rank	Net Paid Daily Circ.	Daily 5,000 Line Rate	Milline Rate	Commonly Owned TV Station in Same Market
News (E)	Chicago (3)	444,250	1.71	3.85	WFLD-TV
News (M)	Dallas (11)	266,667	1.03*	3.86	WFAA-TV
Star-News (E)	Washington (9)	408,193	1.61	3.94	WMAL-TV
Tribune (M)	Chicago (3)	681,759	2.70	3.96	WGN-TV
Herald (M)	Miami (18)	384,824	1.533	3.98	
Times-Herald (E)	Dallas (11)	243,524	.98*	4.02	KDFW-TV
Tribune (E)	Oakland (6)	186,745	.77*	4.12	
Star-Ledger (M)	Newark (1)	356,306	1.49	4.18	
Herald-Examiner (E)	Los Angeles (2)	452,885	1.96	4.33	
Chronicle (E)	Houston (14)	299,228	1.31	4.38	
Bulletin (E)	Philadelphia (4)	600,809	2.65	4.41	
Sun (M&E)	Baltimore (19)	384,739	1.70**	4.42	WMAR-TV
Post (M)	Houston (14)	293,595	1.31	4.46	KPRC-TV
Globe Democrat (M)	St. Louis (12)	284,110	1.27	4.47	KTVI-TV
Times (E)	Seattle (15)	236,866	1.086	4.58	
Times (M)	New York (1)	834,278	3.87	4.64	
News (E)	Indianapolis (17)	178,770	.83	4.64	
Journal (E)	Atlanta (16)	253,721	1.18*	4.65	WSB-TV

*Flat-line applies to 5,000 lines.

**Ad linage sold only for both morning and evening editions.

M – Morning Paper.

E – Evening Paper.

TABLE 4 (continued)

ADVERTISING RATES AND COMMONLY OWNED TELEVISION STATIONS OF METROPOLITAN DAILY NEWSPAPERS (CIRCULATION 100,000 OR MORE) IN THE TOP 20 MARKETS[a]

Newspaper (Ranked in Order of Milline Rate Starting with Lowest	City and Market Rank	Net Paid Daily Circ.	Daily 5,000 Line Rate	Milline Rate	Commonly Owned TV Station in Same Market
Globe (M&E)	Boston (5)	466,272	2.17*	4.65	WKG-TV
Post-Dispatch (E)	St. Louis (12)	298,515	1.44	4.82	KSD–TV
News (E)	Philadelphia (4)	262,391	1.29	4.92	
Herald-American (E)	Boston (5)	371,664	1.85	4.98	
Long Island Press (E)	New York (1)	355,046	1.77	4.99	WCOO-TV
Tribune (M)	Minneapolis (13)	233,025	1.18	5.06	WCCO-TV
Post-Intelligencer (M)	Seattle (15)	197,999	1.028	5.19	
Post (E)	New York (1)	626,713	3.30	5.27	
Constitution (M)	Atlanta (16)	213,212	1.13*	5.30	WSB-TV
Star (E)	Minneapolis (13)	253,491	1.36	5.37	WCCO-TV
Chronicle (M)	San Francisco (6)	468,091	2.54*	5.43	KRON-TV
Press (E)	Pittsburgh (10)	287,405	1.58	5.50	
Times (M)	St. Petersburg (20	172,439	.95*	5.51	
Inquirer (M)	Philadelphia (4)	454,741	2.52	5.54	
Post-Gazette (M)	Pittsburgh (10)	219,425	1.23	5.61	
Pioneer Press (M)	St. Paul (13)	107,963	.63	5.84	WCCO-TV
Tribune (M)	Tampa (20)	165,586	.98*	5.92	WFLA-TV
Newsday (E)	Garden City, NY (1)	444,407	2.75*	6.19	
News-American (E)	Baltimore (19)	217,423	1.35*	6.21	WBAL-TV
St. Paul Dispatch (E)	St. Paul (13)	126,147	.815	6.46	WCCO-TV
Examiner (E)	San Francisco (6)	180,019	1.515	8.42	

*Flat-line applies to 5,000 lines.
**Ad linage sold only for both morning and evening editions.
M – Morning Paper.
E – Evening Paper.

TABLE 5

NEWSPAPER ADVERTISING RATES AND TELEVISION CROSS-OWNERSHIP: SUMMARY OF FINDINGS

(Source: Table 4)

1. Of the 50 papers listed in Table 4, 26 are owned by companies or individuals that also own TV stations in the same metropolitan area (i.e., "cross-ownership papers").

2. The average milline rate of the cross-ownership papers ($4.51) is lower than the average for papers not involved in cross-ownership situations ($4.78). However, these averages are badly distorted by a significant skew in the distribution of papers within quartiles of the range ($2.65 – $8.42):

Quartile	Quartile Range	Total Papers	Cross-Ownership Papers
Lowest	$2.65-4.09	17	12
Second	4.10-5.53	25	10
Third	5.54-6.98	7	4
Upper	6.99-8.42	1	0

3. In the lower half of the range, one finds:

	Average Milline Rate
42 of 50 total papers	$4.33
22 of 26 cross-ownership papers	4.23
20 of 24 non-cross ownership	4.45

[FCC PUBLIC NOTICE 26054-B,
(July 15, 1975)]

HEARING CALENDAR (Commission *en banc)*

Docket No.	Applicant	Nature of Application

WEDNESDAY, JULY 24, 1974 (Oral Argument to be held before the Commission *en banc*. Room 856, 1919 M St. N.W., Washington, D.C.)
thru
FRIDAY, JULY 26, 1974

18110 Amendment of Sections 73.35, 73.240 and 73.636 of the Commission Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations.

SCHEDULE OF APPEARANCES

Wednesday, July 24, 1974

Schedule	Party	Minutes Allotted
9:30 a.m.	U.S. Department of Justice	30
10:00	American Newspaper Publishers Association	60
11:00	Community Coalition for Media Change	20
11:20	Stauffer Publications, Inc.	10
11:30	Baer, Walter S.	20
11:50	Elyria-Lorain Broadcasting Co., Owensboro Broadcasting Co., and WEEU Broadcasting Company	20
12:10 p.m.	Citizens Communication Center (St. Louis Broadcast Coalition)	10
2:00	National Black Media Coalition	60
3:00	Post-Newsweek Station, Capital Area, Inc.	20
3:20	Houston Post Co. and Channel Two Television Co.	20

3:40	Center for Governmental Responsibility	20
4:00	Pulitzer Publishing Company, KSD, KSD-TV, Inc.	10
4:10	Evening News Association, Lee Enterprises, Inc. & WKY Television System, Inc.	20

Thursday, July 25, 1974

9:30 a.m.	National Association of Broadcasters	60
10:30	Barnett, Stephen R. (or his representative)	20
10:50	Cox Broadcasting Corporation	15
11:05	WGM Continental Broadcasting Co. & WPIX, Inc.	10
11:15	Newhouse Broadcasting Corporation	10
11:25	Alabama Civil Liberties Union	10
11:35	Donrey, Inc.	10
11:45	Center for Policy Research, Inc.	20
12:05 p.m.	Buffalo Evening News, Inc. and WBEN, Inc.	20
2:00	National Citizens Committee for Broadcasting	15
2:15	Dempsey & Koplovitz	15
2:30	Clift, Charles E.	15
2:45	Rocky Mountain Broadcasters Association	15
3:00	Duhamel Broadcasting Enterprises	10
3:10	Patrick, Wm. Lawrence	10
3:20	Effingham Broadcasting Company	10
3:30	KUTV, Inc.	10
3:40	WHAS, Inc.	20
4:00	Channel 7 Corporation	5

FRIDAY, JULY 26, 1974

9:30 a.m.	American Broadcasting Companies, Inc.	20
9:50	Americans for Democratic Action	15
10:05	Chronicle Publishing Co. and Chronicle Broadcasting Co.	10
10:15	Huntington Broadcaster, Inc.	10
10:25	Multimedia, Inc.	10
10:35	Post Company	10
10:45	Quincy Broadcasting Co. & Quincy Newspapers, Inc.	10

10:55	Radio Medford, Inc.	10
11:05	Labor Union News, Inc.	10
11:15	WTMJ, Inc.	20
11:35	Vindicator Printing Co. / WEMJ Broadcasting Co.	15
11:50	Walker, George R.	10
12:00 noon	Brockway Company	15
12:15	KSL, Incorporated	20

[Transcript of Oral Argument in Docket 18110, pp 130-148; 158-161; 179-181; 186-194; 380-385; 441-455 (July 1974)]

[130] THE CHAIRMAN: The National Citizens Committee for Broadcasting will be our final appearance for the morning session.

ARGUMENT ON BEHALF OF NATIONAL CITIZENS COMMITTEE FOR BROADCASTING

By

FRANK LLOYD

MR. LLOYD: Thank you very much.

As you stated, there has been a substitution and the St. Louis Broadcast Coalition will be appearing tomorrow at the time scheduled for the National Citizens Committee for Broadcasting.

I am Frank Lloyd, Director of the Citizens Community Center, appearing for NCCB.

NCCB has long opposed concentration of control in media; in fact, it, along with the Justice Department, was one of the first parties to propose including newspapers in this docket in response to the 1968 Notice. In fact, we resent the ANPA comment without Justice there would be no rule-making on this issue.

The Citizens group has been raising this issue in petitions to deny since 1969 and has been pressing for a resolution of this issue.

I don't want to go over grounds you have heard before. I will try to be very brief.

It seems to me that what you have heard this morning, really echoing Wally Baer on this, comes down to where

you [131] put the burden of proof in this proceeding.

The co-owners of broadcast and newspaper properties argue that they have put a heavy investment in and we need a clear showing of abuse and harm to require divestiture of one or the other.

The proponents of the rule of the Justice Department, ourselves, other citizens groups, argue that the FCC has a basic mandate for diversification media and that the broadcasters must show some clear benefit from the cross-ownership with newspapers to overcome this heavy burden of proof.

THE CHAIRMAN: Do you see any difference in that burden between prospective rules and divestiture?

MR. LLOYD: I see none. Clearly, it is easier once we get to the harm aspect, it seems to me that once you show that there are no countervailing benefits in terms of better programming by the cross-ownership or you can't prove beyond the shadow of a doubt that there are abuses in every one of these cases, should you carry out the basic mandate of diversification and what are the trade-offs.

COMMISSIONER HOOKS: You say that we have a mandate for diversification of media.

There has been some statement here this morning and in these voluminous filings that this Commission, as a matter of fact, encouraged newspapers to buy and operate television stations in the '50's.

[132] If we do have a mandate for diversification, under what time and circumstances does that mandate start? Did we have it before 1950 and just ignored it when we were advising, if that is indeed the fact?

MR. LLOYD: The First Amendment is an evolving standard.

I think that prior to the time that the Commission adopted its duopoly rules it may have encouraged the

same owner to own two stations in the same market because they were the only owners willing to buy those stations. They then adopted the duopoly rule and required divestiture.

COMMISSIONER HOOKS: In what time frame would you say the mandate for the diversification started with the adoption of the duopoly rules?

MR. LLOYD: The first time that the Commission began to look at this mandate to provide diversity as one that could be exercised through its economic deconcentration power as opposed to its programming power and that it might be better for the Commission to exercise this through its economic deconcentration authority.

COMMISSIONER HOOKS: I take it you don't think much of Mr. Fletcher's argument that he made in 1936 and repeats today that, constitutionally, we have no authority statutorily to prevent a newspaper publisher from owning a broadcast license.

MR. LLOYD: I do not.

[133] I think that the mandate that you have comes across clearly in your 1970 Notice where you said centralization of control over the media of mass communications is like monopolization of monopoly power, per se, undesirable.

Even the House Report on H.R. 12923, after talking about the deconcentration issue, said, "This is not to suggest in the slightest way that the Commission should be less vigilant in avoiding undue concentrations of control or less vigorous in effectively promoting diversification of broadcasting service."

It specifically stated these are worthy objectives that are the responsibility of the Commission.

So, you have ample statutory legislative history for this.

It seems to me to carry this out you have to look at how the two sides presented their burden.

We have raised in many petitions to deny in many individual cases abuses. In many cases, the Commission has not held these to be worthy of non-renewal but they have recognized that these show a potential for abuse in newspaper-TV cross-ownership.

In the KRON case, the Commission admitted that newsroom personnel were influenced by the relationship with the newspaper in reporting newspaper strikes, the Newspaper Preservation Act, cable franchising activity. The Commission went on [134] the narrow grounds that top management had not authorized this influence but the fact remains and the Commission recognizes that there was influence; there was a potential.

In Columbus, Ohio there was an influence on the TV listings. This has come up again and again in cases where you have the station running their own listings in bold face for their own TV and radio outlets.

THE CHAIRMAN: The argument that the broadcast and newspaper interests make is that abuses like that, that could be alleged to be an abuse, could be dealt with.

MR. LLOYD: But we have to deal with them, particularly in the programming area under an extrinsic evidence standard.

The Commission recognizes this is a difficult First Amendment area.

If you are getting into abuses, you are necessarily looking into programming questions.

THE CHAIRMAN: I meant listening.

MR. LLOYD: Yes; you could deal with that.

You could not deal with the newsroom basic conflict of interest. To get into that in an individual case, you have to hold a hearing, question news personnel.

The economic concentration approach, the approach this rule takes, is the least restrictive alternative. It is the way to get diversity with the least infringement on First Amendment rights.

[135] By going after abuses, you necessarily have to dig in and hold a hearing on what is happening in the newsroom.

I think the Commission should be taking the least restrictive First Amendment approach. The coverage of the media, itself, is perhaps the most critical place where you find this conflict of interest. In many communities, the media, itself, is the issue.

If they are co-owned, you can't get newspaper criticism of the television station. It was very hard to get coverage on co-owned TV stations in the Newspapers Preservation Act.

The St. Louis Journal did an article on that subject.

The point is not that we have made a clear and convincing case. We have shown a potential for harm. This is not an impeachment proceeding. This is not a prosecution, as ANPA seems to say, that they are being told that they were criminals and felons.

COMMISSIONER HOOKS: Likened to.

MR. LLOYD: Right.

We do not feel that the Commission needs a stronger case here than they needed for their duopoly rules, than they needed for their one-to-a-market rule. There was no conclusive proof that there would be worse programming if there would be two different owners of TV stations in the same town.

The Commission did not ask for conclusive studies and did very few studies at those times. It went on its basic [136] mandate.

I think that here again you should go on your basic mandate and the potential for abuse.

In the Wall Street Journal yesterday, we saw an article where a cross-owner said, "People around here just don't want to hear any other point of view."

Well, maybe that is true in that community but I don't believe the Commission should operate on that basic principle. They should operate on the principle there is a value in more diversity. If neither side meets the burden of clear evidence of better or worse performance, then deconcentration is mandated without showing there is some loss to the public.

We have had many arguments this morning. It seems to me that if the publishers argue that they will lose the economies of joint operation, then those economies must mean one of two things: Either they have joined their news staffs and joined their operations to the point that you have the adverse influence on diversity and even greater need for the rule, or that the same joint ownership is worth more in the stock market and that they are a more profitable enterprise because of their common ownership and they are saying the market places a value on monopoly power.

That is the very monopoly power we want to get rid of.

Basically, and I won't go through all the rest of the points that have been raised; I think they have been dealt [137] with; I think one of them has not been dealt with and that is the idea of instability, that they will be trading stations and new owners will come into the market rather than local. I think that sometimes a new face in a community is a valuable thing. In the first place, that new owner will have to conduct a new ascertainment of the community, will have to meet with community groups who may want to enter in a dialogue with him about how he is going to operate the station, may want to take fresh look at it.

I don't feel that it is necessarily bad for the Washington Post to be in Hartford or Jacksonville. They are a fresh face there. They are bringing a new viewpoint there. I think that can be very valuable for those communities.

There may be too much insulation. I think you have to balance localism with the concept of new faces.

My second major point, and I only have two, is this point that diversification is better carried out by a content neutral approach. Here is a chance for FCC to carry out its mandate in a way free of ideological taint. We don't care about the politics of the co-owner, the idea on the air. After that, we will let the free market and information and news function. This is the era of the Torinella case, of the NBC pensions case.

This is the time that many people are concerned with the FCC in the news room.

[138] This rule is designed to get the FCC out of the news room, out of looking for abuses, out of looking for individual allegations of abuses of this co-ownership relationship.

There is a market difference between the regulation of the economic structure of the communications industry which is designed to protect the basic minimum conditions in which free diversified speech may develop and regulations which attempt directly to assure such diversified speech by examining the speech, itself, to see if it meets the test of balanced fairness and diversity.

I feel if the public groups in this country are not to have the tools of the Fairness Doctrine to deal with counter commercials, not to have these weapons to get direct access to the medium, they have to have assurance of an unrigged marketplace, of one that will operate totally freely.

NCCB's proposal is before you. I will not go through it in detail. We argue for a flat ban on future acquisitions,

divestiture per se if over 30 per cent of the control of the audience in the market. If there is 20 to 30 per cent control, that is a prima facie test of concentration. Then you would look at a hearing into individual factors which will be specified by statute and you get out of the bind that the House Report says and we feel that the Commission does use shifting standards.

We would agree that it is difficult to know how you are [139] going to deal with the concentration case without listing of specific fact.

I think you have shown by the top 50 market policy how difficult it is to spell these out in a policy statement and not in a rule and using different criteria in each of the different cases under the top 50 market policies. We agree there should be some clarity in this area.

My final note I leave with you is, after hearing the argument this morning, I think even more strongly that the Commission needs an office of chief economist. The Commission now has economic divisions in each bureau which are subject to the normal bureau control, loyalty. That is very good, but you have an independent chief engineer; you have a general counsel, which can come to your meetings and advise you directly. I feel that the FCC needs its own high level of economist at these meetings to subject each case to independent analysis.

This could get away from the analysis of the input of the Justice Department. I feel the Justice Department is a very important party in this proceeding but the Commission should not be depending on studies from the Justice Department, studies from the industry, studies from citizens groups who don't have the resources. It should have the capacity to have its own studies and to arbitrate between these conflicting studies on the basis of its own firm factual [140] information.

THE CHAIRMAN: I might say that is one of the reasons why the Office of Plans and Policies has been established. I appreciate your comment in that regard.

Thank you.

We will start again at two o'clock.

(Whereupon, at 12:40 p.m., the oral argument hearing recessed, to reconvene at 2:00 p.m. of the same day.)

AFTERNOON SESSION

(2:00 p.m.)

[141] THE CHAIRMAN: We will begin now with the National Black Media Coalition.

MR. HAYES: Mr. Chairman, Jim Robinson will start off.

ARGUMENT ON BEHALF OF COLUMBUS BROADCAST COALITION By JAMES T. ROBINSON, JR.

MR. ROBINSON: Mr. Chairman, my name is Jim Robinson, with the National Black Media Coalition, and more specifically with the Columbus Broadcast Coalition of Columbus, Ohio.

I am here today representing the Columbus Broadcast Coalition of Columbus, Ohio. For years we have been concerned about the problems of print broadcast media cross-ownership and have been bringing those concerns to the attention of the Commission through formal pleadings for nearly five years.

May I just say here that the problems inherent in the

effort of a community group to petition an agency of the Government on issues of denial, exclusion and discrimination are truly monumental, especially when on the other side of those issues sit powerful and very wealthy media groups. The community group is automatically at a tremendous disadvantage and, further, is often totally dependent upon volunteer services from deeply concerned and committed [142] persons.

We have managed to sustain our thrust and concern for five years—primarily because the abuses of power that we continue to witness are so blatant, but even more because we believe our city and metropolitan area continue to have the potential to solve their problems. That in fact is the reason the Coalition was formed. Our hope has always been to develop the kind of cooperation between media groups and concerned citizens that would lead to problem solving as opposed to having the problematic facets of vital issues exascerbated by faulty media coverage and by one-sided, tunnel-vision in terms of information delivery. We contend and we believe we have evidence to prove such negative control over information delivery exists in the mid-Ohio (or rather metropolitan Columbus) area.

Actually, of the 19 broadcast outlets in Columbus, 15 are involved in cross and multiple ownership; of the four remaining stations three are limited audience FM radio stations, and one is an independent television station in the City of Columbus, but is part of a broadcast chain. Therefore, nearly 80 percent of the broadcast outlets are involved in cross-ownership arrangements.

But even more significant is the fact that the largest broadcast media group is cross-owned by an evening newspaper, which is the largest newspaper in the two-daily newspaper [143] market. Further complicating this picture is the fact that the other newspaper, the morning

newspaper, is printed by, has its advertising solicited by, and has its number of pages determined by the evening newspaper. Therefore the range of direct control, indirect control, and direct influence exercised by this one group over information delivery in the Columbus area includes the major television station, two of the major radio stations, the major newspaper and in a real sense the second newspaper in the market. It is only incidental, but nevertheless noteworthy, that this group's influence includes major banks, investment companies, real estate, and land development.

So great is this group's stake in the economic future of the Columbus area that its control over information delivery tends to be special interest oriented, as opposed to public interest oriented. Far too many of its positions, therefore, on issues of public policy are in its own interest and not that of the public. And though its broadcast activities are regulated by an agency of the stature of the Federal Communications Commission, there are no real limitations on its ability to use all of the market's significant print media for its own interests.

To what issues of public policy do I allude and are they the dominant and vital issues? I would maintain, on behalf of my group of concerned citizens, that surely the [144] issues of expanded voter registration, the rights of 18 year olds to vote, taxation, prison reform, criminal codes, partisan election issues, bonds and levies, discrimination in employment—both public and private, enforcement power of the Ohio Civil Rights Commission, developing awareness of Black citizens to their heritage and contributions to America, et cetera, are vital issues. This group's awesome power over the expression of unpopular positions and opinions—positions and opinions, I might add, that they themselves make unpopular by presenting only one side is well known. Its awesome power to pun-

ish those who differ with its views is intimidating and stifles in most citizens the desire to differ. This power, we assert, creates and maintains an uninformed electorate.

May I cite here my own personal experience: In September of 1970 I joined with other concerned Columbus citizens in filing petitions to deny against the heretofore mentioned media group's electronic media. I signed as an individual citizen but was publicized in bold type in a story about the issue in the media group's newspaper under my title and place of employment. No other petitioner was so listed in the story, even though others too held positions of significance. All were listed as they signed. This action damaged my career, and a promotion which I had been assured was subsequently denied. The explanation for the [145] denial was that I could no longer effectively deal with the media—a requirement of the new job. I ultimately received that promotion three years later. I believe this to be a perfect illustration of the misuse of the power of this media group. This is but one example.

Permit me to also cite a current example of the danger of this cross-ownership. For more than two years, an Ad Hoc Committee, authorized by the Mayor of the City of Columbus to study and advise on the employment policies of the City as they relate primarily to the uniformed services—the police and fire departments—has been taking a step-by-step approach to solving discrimination in this area. It is one of the most difficult issues facing urban communities of any size.

Columbus is very close to solutions in this area principally through the work of the Mayor's Ad Hoc Committee on Recruitment. But again the awesome power of this cross-owned media group has denied the Committee the ability to keep the rest of the community abreast of what

it has learned during the 24 months of study and deliberations. Only the disagreements and difficulties of the group have been publicized, not the agreements and the steps forward. Nor have the precedent setting decisions of courts in jurisdictions all around Columbus, which have a direct bearing on the local issues, been publicized. The dominant media

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[158] **ARGUMENT ON BEHALF OF ROCHESTER BLACK MEDIA COALITION**
By
MERRY LYNN KEY

MS. KEY: First, I would like to ask the Commission to bear with me. I have a slight case of laryngitis.

My name is Merry Key, and I am appearing before you as the representative of the Rochester, New York Black Media Coalition, an affiliate of NBMC.

Rochester could well be "Crossownership City, U.S.A." It is the home of the world's largest newspaper chain, the Gannett Newspapers. Gannett has for years owned WHEC-TV in Rochester, and until 1971 it also owned Rochester's second most powerful radio station, WHEC-AM. It also owns both the morning and evening newspapers in Rochester, and a major area cable TV system.

While it is not permitted to own much more than this in other media properties, its influence extends far beyond the newspapers, the TV station, and the cable system. The Chairman of the Board of Gannett, and the publisher of the Rochester papers, is also President of the Associated Press, the world's largest news service. The

General Manager of WHEC-TV is the brother of the news director at another Rochester TV station, WROC-TV. And the [159] top executives of the Gannett Company hold key positions in the Chamber of Commerce, the Boards of several banks and major corporations, and in the city sub-government.

Rochester provides several very specific examples of how newspaper-broadcast crossownership can lead to incredible abuses of power by monopolists. While the organizations in the Rochester Black Media Coalition have a petition to deny the license renewals of 14 Rochester stations, including Gannett-owned WHEC-TV, outstanding before you, and I am a party to that petition, I will not discuss it with you now. The petition dealt solely with issues of discrimination in employment and programming, not with crossownership. None of the problems I will discuss and relate to you is in any way at issue in the petition to deny.

However, the presence of crossownership involving WHEC-TV itself needs to be addressed, and we feel that this proceeding is the proper place, because it is likely that the visible results of crossownership abuses in Rochester are certain to exist in other crossownership cities as well, while perhaps not as visibly as in my home town.

The Rochester newspapers have a policy of not permitting newspeople to appear on competing television and radio stations. This policy is posted as a warning to newsroom employees, on the newsroom bulletin board. Gannett newsmen, however, regularly appear on the public affairs [160] programs of Gannett-owned WHEC-TV.

This policy works to the detriment of a locally-owned station, WOKR-TV, which has a public affairs program modelled after "Meet The Press" which deals with local

public issues. The only newsmen appearing represent radio stations or small suburban newspapers. Thus, the program's quality suffers, because Gannett Newspapers refuses to permit its 80-odd newsmen and women to appear. Since these newspeople represent nearly half of all the professional newspeople in Rochester, the effect of Gannett's prohibition on appearances on competing stations is to strengthen its own monopoly position unfairly. Gannett even publicly claims that any appearances of its newspeople on competing stations would tend to enhance the image of its competitors, not its own image, and that this somehow justifies restricting the public affairs capabilities of its competitors.

In at least one instance, a former newspaper employee told a member of our Coalition that she appeared at the WOKR-TV studio to do a guest appearance on a morning talk show. Just before airtime, the newspaper called her at the studio and advised her that if she appeared, she'd be promptly fired, because WOKR-TV competed with the newspaper-owned WHEC-TV. The show went on without her.

This is significant because it shows that when media monopolies exist, not only does the monopolist have no [161] incentive to provide superior service, his competitors also begin to have difficulty improving their service. When the FCC allows crossownership to exist, everybody suffers.

We have no great desire to applaud anything done by WOKR-TV. Our petition to deny applies to them as well, and while it does make one brave attempt at a public affairs program, it remains, in the opinion of many Black residents as reported in Rochester's alternative newspaper, the most racist station in Rochester in its employment and programming practices. However, this is no

reason for us to blind ourselves to the fact that even racists suffer from unfair competition.

In the summer of 1972, the Rochester Black Media Coalition held a mass meeting in the summer of 1972 in a neighborhood center. Almost 200 Black and Puerto Rican folks came and they were mad as hell about racism on TV. The newspaper's reporter was asked to leave, since we were planning strategy for a possible demonstration the next day. She immediately went to a TV station to appear live on the 11:00 p.m. news and complain that she was "put out of our meeting". Although three of Rochester's TV stations and 12 of its radio stations carry the news at 11:00, the station she just happened to choose to appear on was none other than WHEC-TV, which is owned by her newspapers. The newspapers and WHEC-TV gave no coverage of the primary point of the

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[179] **ARGUMENT ON BEHALF OF FACT, INC., NEW HAVEN, CONNECTICUT By JAMES ALEXANDER, EXECUTIVE DIRECTOR**

MR. ALEXANDER: Honorable Members of the Commission, Mr. Chairman, my name is James Alexander, and I am appearing before you as Executive Director of the Freedom Arts & Communications Team, FACT, Inc., of New Haven, Connecticut. FACT is the New Haven affiliate of the National Black Media Coalition. We conduct an ongoing training and community organization program designed to eliminate the effects of institutional racism from the mass media.

Divestiture in crossownership situations would perhaps lead to nothing better than one wealthy white broadcaster replacing another. In Les Brown's book Television: The Business Behind the Box, Mr. Brown reports that at the 1971 NAB Convention, multiple station owners were already working out deals to traffic in stations in order to comply with any divestitures resulting from Docket 18110.

Short of a rule that such divestitures be made in such a way that Black owners from the local community would have the first opportunity to buy into the stations put up for divestiture, this may be unavoidable.

THE CHAIRMAN: Is that something we can do under the Communications Act as you understand it?

MR. ALEXANDER: At this point I believe we will hold [180] this and let Mr. Hayes address himself to that.

THE CHAIRMAN: That is the question I addressed to Mr. Kweli earlier in fact.

MR. ALEXANDER: I hope the Commission takes steps to encourage monopoly owners to sell stations to local Black companies.

However, even if the only result of Docket 18110 is massive divestitures, this alone would provide an incentive to a score of new station operators to provide improved service to their communities.

My home State of Connecticut has seen innumerable transfers and sales of stations, the most notable of which was the CapCities transfer of the Triangle Publications stations in 1971. The CapCities station, WTNH-TV, negotiated an agreement, along with two other stations involved in the transfer, with Black citizen groups in New Haven, Philadelphia and Fresno. The agreement resulted in extensive minority documentary programming, employment opportunities, and the establishment of the first station advisory council in Connecticut. This in turn

led to the formation of advisory councils at WHNB-TV, and at WFSB-TV, the new Washington Post-owned station.

When the Post took over what is now WFSB-TV, it had to conduct an ascertainment of needs and make extensive efforts to become familiar with its service area. As a newcomer, it [181] was able to come into Connecticut without predetermined ideas about what the community needed. It is much easier for citizen groups to deal with the accountability of a newcomer than to deal with improving any incumbent.

Connecticut is also the home of one of the worst cross-ownership situations in the country. A single company in Stamford owns both newspapers, the only AM station and the only FM station. Allegations have been raised that this licensee discriminated against certain political candidates in allocating broadcast time.

Furthermore, Black citizens in Stamford have complained that the only Black-oriented program in its stations, Black Viewpoint, was removed from the air and replaced only after a competing application was filed for the station. Last month this Commission ordered a hearing on the issue of whether these practices constitute an abuse of power deriving from the existence of cross-ownership.

While this kind of classic, single-owner cross-ownership clearly results in abuses, newspaper-broadcast ownership even in the presence of competing stations can lead to serious problems as well. A major problem is the failure of cross-owned stations to seriously provide coverage of the local newspapers, and of the newspapers to provide coverage of the quality of local broadcasters. Cross-ownership provides a built-in conflict of interest in coverage of one of the most

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[186] THE CHAIRMAN: Next is the Post-Newsweek station, Capital Area, Incorporated. Ernest W. Gennes.

ARGUMENT ON BEHALF OF POST-NEWSWEEK STATION, CAPITAL AREA, INC.
By
ERNEST W. GENNES

MR. GENNES: Before the gentlemen from New Haven leave, I would like to tell them that I was pleased to hear about the wonderful job that the Post-Newsweek station is doing in Hartford. I can only assure them that it is doing an equally fine job in Washington, wholly independent of the Washington Post.

THE CHAIRMAN: If you will identify yourself for the record.

MR. GENNES: I am Ernest W. Gennes, counsel for Post-Newsweek station, Capital Area, Incorporated. If it please the Commission first let me address myself briefly to the so-called anti-trust point which for a substantial part of this proceeding has been the principle thrust of the case of the Anti-Trust Division.

The Anti-Trust Division has not provided this Commission with a single case showing that the facts and that the anti-trust laws require divestiture of newspaper affiliated television stations. If they had the cases they would not be here, they would be in court.

[187] Mr. Chairman, when Mr. Grossman turned off your question this morning with a joke I would have liked to have reminded him that the fact is that the Department of Justice did proceed against NBC in Philadelphia. Primary jurisdiction was argued in Philadelphia

and the Philadelphia court ordered divestiture of the Philadelphia station.

Now instead of being in court the Department of Justice is here arguing that there is an anti-trust policy beyond the anti-trust laws and beyond the decided cases which favors the largest possible number of separately owned competitors in every definable market and that this policy overrides all other public interest considerations.

But there is no such policy. The purpose of the anti-trust laws is to preserve vigorous economic competition, not to maximize the total number of competitors to the exclusion of all other considerations.

Moreover, the fact is that television commercials and newspaper advertisements, Commissioner Robinson, are not interchangeable products. There is not cross elasticity. It is true that cans and bottles are regarded as interchangeable but beer and Coca Cola are not. There are yachts racing up in New England in the 12 meter races now which are made of wood and are made of aluminum. But wood and aluminum are not interchangeable products. Neither is television advertising and newspaper advertising, although there is some [188] overlap.

Television stations and newspapers do not in the anti-trust sense compete for advertising in the same relevant market either in fact or under the court cases. Justice would have you adopt the policy that it is bad anti-trust policy as well as have you adopt bad anti-trust law.

Now another mistaken premise is that divestiture would foster diversity and news information and opinion. But diversity of expression and maximization of owners are not the same thing. That I believe is the fundamental error of the performance of divestiture. A television station is most likely to contribute significantly to the diversity of information and ideas if it is committed in principle to using a variety of sources of news and opinion, to providing generally informative news service, to doing original reporting, to doing investigative reporting without fear or favor, to encouraging debate by informed persons on political issues and to assuring its reporters and its commentators freedom to present news and opinion subject only to the constraints of responsible reporting.

This is not a matter of magnanimity as Mr. Grossman suggested. These attitudes are part of a tradition of a free press. They are part of the tradition of journalism as an honored profession and they are certainly at least as likely to be found in newspaper affiliated stations as in stations [189] owned by local business interests or owned by a group of special interests or by a local group so deliberately chosen to apparently reflect a community cross-section, that its news, its information, its editorials are forced into a blank neutrality for fear of offending anyone, or indeed by a non-local conglomerate rather with many business interests.

The mistaken premises of the Anti-Trust Division supporters lead inevitably to another basic error. That error is that this Commission should formulate a newspaper television station common ownership rule on the basis of presumption rather than on the basis of fact.

If there is one thing clear from this four year record it is that there is no evidence of competitive abuses or predatory commercial practices of the kind proscribed by the anti-trust laws, let alone illegal monopolies or other violations of the anti-trust laws arising out of cross-ownership. Absent such excesses, absent such abuses or violations, performance should control.

THE CHAIRMAN: When you say no monopolization, the second part of it, could we say based on a structure argument there could be in certain markets, perhaps in

every cross-owned market, some problem that we should be concerned about when we think about concentration of control of the mass media?

MR. GENNES: I don't think that there is on any theory [190] a monopoly or illegal monopoly in every cross-owned market. Indeed, I think there is intense competition.

THE CHAIRMAN: You acknowledge in some markets it is potentially there?

MR. GENNES: In some markets. I think the troublesome markets, Mr. Chairman, are the small markets. Indeed in the troublesome markets it is possible that the product choice is so limited that there is a fusion of the television market and the newspaper market so that perhaps there is a monopolization as to which this Commission should be concerned which would not exist in a larger market.

COMMISSIONER ROBINSON: You would not insist then that we would have to find an abuse before we take any action given other appropriate evidence of such concentration to warrant concern?

MR. GENNES: My position is this. Absent monopoly you have to find an abuse.

COMMISSIONER ROBINSON: You mean in a literal sense a monopoly?

MR. GENNES: In a literal sense. Well, absent what you can properly find a monopoly.

COMMISSIONER ROBINSON: If the Washington Post merged with the Washington Star we could not act without finding abuse?

MR. GENNES: Certainly not. If your question is if [191] there is one newspaper rather than two newspapers in Washington would this be a monopoly market requiring your attention, my answer would be no. The television broadcasting market consists of five commercial stations. There is an educational station, there are some 40 radio stations. This is a highly competitive market.

COMMISSIONER HOOKS: You differentiate at that level, you are going back to the argument that there is a generic difference between newspaper and television. You are saying if there is only one newspaper here that we could not find the monopoly with the ownership of the television station because television has to be compared with the other four television stations rather than the fact that it is co-owned by the one newspaper. Is that the basis of what you are saying?

MR. GENNES: I start from a different premise. My premise is that in fact television advertising and newspaper advertising are not competitive products. Accordingly in anti-trust terms they are not in the same roles at market. To the extent you are taking anti-trust policy into account you have no problem at all.

In response to Commissioner Robinson and to the Chairman I say yes, if you have a situation where there is one television station, one nywspaper, one radio, the fusion of the broadcast market, product market, and of the newspaper [192] market could exist so that products really are interchangeable. Accordingly television and newspaper become one market.

If both television and newspaper are owned by the same owner then you could well find you have a monopoly situation. I am not advocating that. I am saying you could find that.

THE CHAIRMAN: Mr. Gennes, when you say there could be separate product markets between newspaper and televisiqn in answer to Commissioner Hooks are you referring only to advertising now? What about news information?

MR. GENNES: At this point in the argument I am addressing myself to advertising because this was the starting point for the Department of Justice. It is hard to follow the Department of Justice's argument. I don't mean to be cute about it.

COMMISSIONER HOOKS: In dissemination of news two points are involved. One is advertising and the other is news. What I was trying to raise was whether or not you were considering that you could not bring up monopolization as an inherent thing if there were only one newspaper because you would be rating the four television stations as one species of profit and the newspaper another so far as advertising is concerned. I understand that.

When you go further, what about the dissemination of news?

[193] MR. GENNES: To the extent it is addressed to the market where there are a number of television stations, where there are a number of radio stations, if there is one newspaper I say it is a competitive market so far as mass communications is concerned and accordingly you don't have a monopolization. Accordingly you do have to find abuses.

COMMISSIONER ROBINSON: What would be an example of abuse that you would consider?

MR. GENNES: Forced buying, forced selling, joint advertising practices.

COMMISSIONER ROBINSON: Higher rates?

MR. GENNES: I will come to higher rates in a moment. I think that is a fallacy. But a conspiracy between a newspaper and joint action between a commonly owned newspaper and broadcast station to keep rates up. Of course this would be an abuse.

Of course this would be a proper basis for Commission action.

COMMISSIONER HOOKS: We could not deal with the one point that apparently could be important. You presented only one point of view because you conceal yourself behind the first Amendment. That goes back to the first statement you made in the beginning that the diversity of ownership is at least a promise of diversity of views and the dissemination of news, was consistent with the thing that the [194] National Black Media was talking about in presenting only one view except for the fairness doctrine.

From the viewpoints of anti-competitive practices we could never deal with that, am I right about that, absent fairness doctrine. The shield of the First Amendment would protect a monopolist as it related to presentation of one view.

MR. GENNES: The shield of the First Amendment would not relate to a number of the kind of things which were alleged in the last hour.

COMMISSIONER HOOKS: The diversity of ownership has some co-relation in the minds of some people with diversity of views, at least the possibility of more views which is a major concern of a lot of people.

MR. GENNES: That is correct. I suggest that ownership is less important for diversity than the way in which the station is run. You can have different owners and complete commonality of views and you can have common owners and you can have a broad spectrum of views being expressed.

COMMISSIONER HOOKS: You may not have given attention to this but if it were possible to deal with this whole question on a regulation of FCC where newspapers do cross-own television-radio facilities in the same locality that they must maintain an editorial staff and that type of thing would be within our regulatory philosophy so far as we are

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[380] We will now proceed—I understand that Dempsey & Koplovitz have withdrawn. So, our next participant will be the Citizens Communication Center, St. Louis Broadcasting Coalition, for ten minutes.

ARGUMENT ON BEHALF OF CITIZENS COMMUNICATION CENTER, ST. LOUIS BROADCAST COALITION
By
NANCY SCHMIDT

MS. SCHMIDT: I am not with Citizens Communication Center. I am Nancy Schmidt, the Chairperson of the St. Louis Broadcast Coalition.

THE CHAIRMAN: We will be pleased to receive your [381] presentation.

MS. SCHMIDT: The members of the Coalition are Action Against Apathy, a predominantly white suburban organization concerned with racism in the white community; the St. Louis Chapter of the United Farm Workers of America; Freedom of Residence, a local interracial organization which is devoted to improving the quality and quantity of local low-income and minority housing; Committee for Action thru Education, also interracial, which seeks to educate whites as to the nature, extent and effects of racism; the St. Louis and Missouri State Chapters of CORE, a black civil rights organization; Parishes Associated on the Kinloch Team, a church-sponsored interracial organization interested in improving living conditions in a black community in North St. Louis County; and ACTION, an interracial St. Louis based human rights organization.

These groups have been in existence from five to over 30 years. Their interest in the media stems from their recognition that the media has an immediate impact on

the problems of racism which they combat in every segment of St. Louis life. This interest has been sustained over a period of several years.

I believe that racism is a white problem, and that attitudinal and institutional changes must take place in the white community if the problem of racism is to be alleviated. [382] One of the primary influences of attitude is the media. With a greater diversity of ownership of the mass media, there is greater likelihood that minority views will reach whites as well as blacks.

The problem of cross-ownership is of particular importance to the St. Louis Broadcast Coalition. In St. Louis, one company, the Pulitzer Publishing Company, owns a newspaper, the Post-Dispatch, plus AM and TV stations, KSD-TV-AM. Another company, Newhouse owns our only other daily newspaper, the Globe-Democrat, and television station, KTVI. Together, these two companies control over 63 percent of all local advertising revenues in the St. Louis market, according to the Department of Justice.

Both Pulitzer and Newhouse have come before you in this proceeding attempting to justify continuation of their concentration of control of the mass media in St. Louis. Pulitzer, for example, argues for continuation of the present situation because (1) they were pioneers in the broadcasting industry, and they now depend on their local broadcast stations for financial security, (2) they have the capacity for innovations through shared profits deriving from cross-ownership, and (3) diversity in the market can be achieved by cable television.

These arguments, however, are invalid.

First, a broadcaster is not entitled to perpetual [383] ownership of a broadcast frequency simply because it was an early pioneer or because it uses its profits to subsidize its newspaper. This is antithetical to the Communications

Act of 1934 which clearly states that the airwaves belong to the public. Licenses are granted only so long as they serve the public interest, convenience and necessity. What a licensee did 52 years ago is irrelevant to whether it holds an undue concentration of control today.

Moreover, newspapers have already received substantial financial benefits by enactment of the Newspaper Preservation Act. Under this law, the two St. Louis daily newspapers have combined their resources, through a joint operating agreement. Thus they do not need subsidies from the broadcast stations—and certainly not from both radio and televison—in order to remain financially viable.

Second, Pulitzer has not supported its claim that cross-ownership allows for capability of underwriting developing but temporarily unprofitable innovations in either broadcast or print media by shared profits or losses. No examples of any such innovations are cited. In St. Louis we certainly do not see any costly innovations taking place in any of the broadcasting facilities co-owned with newspapers. When the Coalition approached these stations with innovative ideas and requests for more and improved public affairs programs, these suggestions were rejected as too costly.

[384] In fact, past performance statistics from the latest renewal applications negate Pulitzer's claim. The two newspaper-owned TV stations in St. Louis aired only ½ as much public affairs and "other" programming as the two non-newspaper owned stations.

Pulitzer, yesterday, also claimed that it innovated in employment of blacks. The fact is that, in analyzing the St. Louis station's Forms 395 the KSD stations are among the worst in St. Louis in terms of minority employment. This lack of aggressive affirmative action is also reflected in the employment policies of KSD's co-owned newspaper. Both KSD stations and the Post-

Dispatch share an Affirmative Action counselor, who at the beginning of this year indicated to the Coalition that he had not yet even written an affirmative action plan for KSD. Diversification of ownership would offer greater potential for commitment by a new owner to affirmative action in the hiring of minorities than has been shown by the present owners.

Finally, the claim that the trend toward growing cable television will eventually increase the number of mass media voices does not withstand close scrutiny. In St. Louis the franchise for cable television was obtained in 1969; construction is not scheduled to begin, however, until at least spring of 1975. With this type of delay, we question whether cable will ever reach St. Louis. We would also point out that the [385] city of St. Louis will have its own cable system, and each city in the suburbs will have their own. Thus, the audience reached via the access channels in any one cable system will be substantially less than that now reached by any of the present VHF stations.

In others words, most local issues affect the entire St. Louis area. Yet, they can only reach the entire area by access to, or ownership of, over-the-air broadcast stations. Individual access to channels on one of a hundred or so systems is simply ineffectual.

In conclusion, the Coalition urges that the FCC adopt a rule banning all cross-ownership of newspaper and television in a single market. This rule would apply to all future acquisitions, and should also include requirements for divestiture in presently existing cross-ownership cases.

Essential to divestiture is inclusion in the rule that preference to be given to minority ownership. In light of the small number of minority owned television stations, the FCC is in a unique position to correct past exclusion

of minorities from opportunities to purchase television stations. The Commission has been historically reticent to enforce affirmative action plans and or equal opportunities in employment by broadcasters; strong wording in the cross-ownership rule demanding that preference be given to minority ownership would demonstrate a commitment by the FCC for

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[440] Next we go to WHAS, Inc., for 20 minutes. We will take right after this WTMJ, Inc., for our final witness. We appreciate Mr. Ricks' and Mr. Cox's cooperation.

ARGUMENT ON BEHALF OF
WHAS, INC.
By
MARCUS COHN

MR. COHN: Thank you, Mr. Chairman.

Before beginning with the argument itself, I would like to introduce the three gentlemen who are sitting to my right. I represent Louisville newspapers and Radio and Television [441] Stations WHAS. To my immediate right is Wilson Wyatt, general counsel for the stations and the newspapers in Louisville. To his right, Ed Shadburne, who is vice president of WHAS. To my extreme right, Barry Bingham, Jr., editor and publisher of the newspapers as well as president of WHAS, Inc.

They will be available for any questions you wish to put to them directly concerning operations of the radio stations or newspapers.

Mr. Chairman, our basic position in this proceeding is that the FCC should adopt specific rules to prevent abuses that can but don't necessarily flow from cross-ownership.

All the rules which we propose are now in effect at WHAS and the newspapers. At the end of my argument I will mention five rules which we propose.

By way of introduction, I want to deal with he operations of the television, radio and newspapers. WHAS-AM began operation in 1922. WHAS-FM operated experimentally beginning in 1949 and then began on a regular license in 1966. It broadcast only classical music, and has a distinguished record of having lost a million dollars in the operation of the station. WHAS-TV began operation in 1950. There were two separate corporations with a newspaper and WHAS. The stockholders of the two corporations are basically similar.

Some basic facts concerning Louisville. Louisville is the 36th market in the United States. It has four commercial [442] television stations, two VHF and two UHF. The three networks are received in the community.

There is a 95 percent penetration of UHF in the market and therefore the UHF compete actively with the VHF. There is one unused UHF station, Channel 21, which is allocated but not licensed.

There are 11 AM stations in the area, that is Louisville and its suburbs. Six of them are full-time stations and five of them are daytime. In addition, there are six FM stations.

Out of the four television stations, two are owned locally and two are owned by non-residents. Nine out of the 17 radio stations, nine out of the 17, are owned by non-residents.

There are two daily newspapers in Louisville, the morning Louisville Courier-Journal and afternoon Louisville Times. These newspapers are not a part of a chain. They were begun by the Bingham family in 1918 and the Bingham family are all local residents of Louisville.

The stockholders of the newspapers and the stations have no mass media interest of any kind whatsoever outside of Louisville. I think this is unique for an institution of this size and this promise.

Moreover, it has consistently rejected all offers to acquire either radio or television or newspapers outside of Louisville. Those kinds of offers for the acquisition of those kinds of institutions come in almost daily.

[443] The reason for this is a basic philosophy in commitment that media should be related to their own local community by the owners themselves who live in that particular community, that local ownership is terribly important as a matter of public philosophy and public interest.

The Courier-Journal has received a great number of accolades during the years of its publication by the Binghams. In 1974 it was included in Time Magazine as one of the ten best newspapers in America. It was described, and I quote: "Although a press monopoly is never desirable, the Courier-Journal handles its responsibility well." Another quote: "Grandson Barry Bingham, Jr., 40, the current editor and publisher, has maintained the paper's public spirit tradition."

In 1974, also in a nationwide ranking by newspaper publishers of the ten best newspapers of America, the Louisville Courier-Journal was ranked as third out of all the daily newspapers in the United States.

Barry Bingham, Jr., editor and publisher of the papers, has received national acclaim as a distinguished publisher. In the July 15, 1974, issue of Time, only a couple of weeks ago, Time made a special edition—special section, I should say, devoted to "Leadership in America," and listed the 200 men in America who were the leaders under the age of 45 and upon whom this country could depend for the kind of leadership which this democratic society

needs in the years to come. Barry [444] Bingham was one out of the 13 from the media.

In other words, there were a total of 13 out of 200 that Time selected from the media, and Barry Bingham was one of the 13, as being one of the 200 of the leaders in America under 45.

I have distributed to you through the staff a lead story from the Wall Street Journal of July 11, 1974, which is devoted to the Louisville newspapers, Barry Bingham, and the basic philosophy and tradition relating to the integrity and the public service of those papers.

I would like to quote two paragraphs from this lead article of the Wall Street Journal of only a couple weeks ago:

"Clearly the 40-year-old Bingham is no ordinary publisher just as the papers his family has headed for three generations are no ordinary newspapers. To begin with, they are better than most. They have won a handful of Pulitzer Prizes and a slew of other national awards, and consistently show up in periodic surveys as the 'Top Ten Newspapers in America.'

"Moreover, the Bingham papers are the acknowledged 'Messrs. Clean' of the newspaper industry. This is no small distinction at a time when the ethics and credibility of the American press are undergoing their closest scrutiny in recent memory."

A word about the structure between the newspapers and [445] the broadcasting stations. The broadcasting stations are in a completely separate building from where the newspapers are published. The building was built in 1968, the current building, at a cost of about $4 million. The staffs of the newspapers and the radio stations and television station are completely separate. There is a complete operational divorcement between the newspapers and the broadcasting stations.

A word about the news gathering and reporting of the two institutions—newspapers on the one hand and broadcasting on the other:

Television has a staff of 129 individuals, of which 20 percent are in the news department. The AM station has 43 on its staff and five are in the news department. Twenty-three percent of the newspaper staff are in the news and editorial departments.

I want to point out to you that this is unique in the newspaper publishing field, that a percentage as high as 23 out of your total staff would be in news and editorials.

There is a reason for it, of course. The commitment of these two nationally-known newspapers to its community, to bringing to its community news in depth and all the news, not only in Louisville but the entire area that the paper serves—

COMMISSIONER REID: You are saying, I assume, that the newspapers have the same staff?

MR. COHN: They are separate staff between the two [446] newspapers. When I say 23 percent, I am lumping all the staffs together.

COMMISSIONER REID: Of the newspapers?

MR. COHN: Yes, ma'am.

There is presently and historically no relationship whatsoever between the rates which the newspapers charge and the rates which the broadcasting stations charge. Leaving aside the structure for a moment, I want to detail with some precision the operational policies of the newspapers and the broadcasting stations.

The news, editorial, and advertising personnel, as I indicated, of the newspapers on the one hand the stations on the other are completely separate. Moreover, and this is significant, and particularly, Commissioner Washburn, in light of your particular question, there is vigorous and

affirmative cross-criticism between the newspapers on the one hand and television and radio stations on the other, of the media.

On the broadcasting stations, the television and AM, those stations have carried for a long period of time the broadcast of an individual by the name of Bob Shulman. The broadcast related to a daily comment of his called "One Man's Opinion." It began in 1969.

I want to quote two or three things that Bob Shulman has said concerning the Louisville newspapers since 1969. Let me add hastily, when I asked for information concerning this [447] I received a stack about this high. I am only going to give you two or three illustrations of a stack of this high of the kind of criticism that took place.

The newspapers had urged editorially a peaceful but powerful demonstration of protest against President Nixon's Christmas Season bombing in Vietnam. Bob Shulman on television and radio said:

"This one man"—referring to Shulman—"can only regret and deplore the encouragement by the newspapers of a protest at the inaugural."

Point No. 2, there was criticism by Bob Shulman on television and radio of the manner in which the newspapers had given editorial support to local political candidates. Shulman said:

"It is a day of anemia that befell the Louisville newspapers for their ambivalence. It was a far cry from the tradition of the co-founder of these papers. The editorialists of today owe it to the people not only to be strong and firm in their endorsement but to brush up on an old saw that is a reporter's catechism: "accuracy, accuracy, accuracy."

Lastly, Bob Shulman said, by way of illustration, after the local newspapers had criticized some of the commercials on WHAS, Bob Shulman retorted that his ana-

lysis of the Louisville Courier-Journal indicated they were ads for losing-weight preparations, making the hair grow more lovely, and [448] promotions of all kinds of patent medicines. He referred to the newspaper critics of WHAS-TV as "dyspeptic newspaper critics."

Those are three of the kinds of illustrations of what goes on on the television and radio stations in terms of their treatment of the newspapers.

THE CHAIRMAN: Of course, the final story is that Shulman writes for the paper, doesn't he?

MR. COHN: He writes for the paper because the paper wanted a skilled professional ombudsman who would be a critic of all of the media, including the paper for which he writes, as well as all of the radio and television stations in the market. He has the experience to do it.

He also has on the television station a program known as "Viewpoint." "Viewpoint" is the public access to the use of the television station for the purpose of voicing the views and complaints of a community, and frequently—and this can all be documented—those voices of protest relate to WHAS as well as the newspapers, right there on the program entitled "Viewpoint."

Let me comment very briefly about some of the public service programming of WHAS-TV.

First of all, more than 20 percent of the programming of this television station, more than 20 percent, has consistently been devoted to news and public affairs. All you have to do [449] is look across the country at television stations and you will recognize the unique responsibility that is being discharged by this television station.

Its peer in the markets, the Advertising Club of Louisville, in a vote gave it 70 percent of the first places for news and community service programs. For 26 years the station has carried an event, a promotion, a local community affair called Crusade for Children, in which funds

are raised for physically and mentally handicapped individuals, children. Last year the station raised $800,000 in this one public service affair.

You undoubtedly have read of the station's investigative reporting entitled "Open City," in which it exposed the corruption and the crime in Louisville, a series of different programs which was ultimately awarded a First Award by the American Trial Lawyers Association.

Mr. Chairman, both the newspapers and the television station have full-time ombudsmen, individuals to whom you can go and complain about what either one of the institutions is doing, and get an affirmative response in terms of what your complaint is.

As far as the newspapers are concerned, you can complain about the fact that stories weren't carried correctly, references to you weren't correct, and this individual has an individual full-time responsibility to see that a correction [450] is made.

It was the first paper in America to have started a local ombudsman, and for three years it was the only newspaper to have it, although today a number do have it.

A reference was made in the course of proceedings yesterday to the National Commission on Violence Report in which someone indicated that report said in effect that newspapers had a responsibility to help solve society's problems.

Very interestingly, in that very report they recognized the greatness of the Louisville Courier-Journal in helping its community in terms of the social issues that this world is facing, particularly the society here in America is facing.

Mr. Chairman, if that light is correct, I gather I have four or five more minutes. I ask your indulgence for two or three more minutes after the red light goes on so that I can judge what I am doing here.

THE CHAIRMAN: All right. We could move along.

MR. COHN: I appreciate that.

In January of 1972, the newspapers also employed a full-time advertising ombudsman, which is the first time in America the newspaper did that. An advertising ombudsman is an individual to whom you can complain concerning any ad or any merchandise or any service that you get based upon an ad placed in the Lousiville Courier-Journal. It is his responsibility to follow up and it is his responsibility to correct [451] any injustice.

COMMISSIONER HOOKS: Let me ask you one question. Suppose that the Commission decided that the diversity of forces would require divestiture. Are you saying that because this is a case that may be outstanding and excellent above, let us say way above average, that we should not rule on the other cases because of this one case, or we should make an exception and grant a waiver?

I read your article, it came out in the Wall Street Journal, and I assume it is a very excellent operation.

Let us assume 80 of the 83 cases deal with the whole business of diversity of forces—

MR. COHN: I don't mean to be facetious, Mr. Commissioner, but if you are resolved to go ahead and issue such a rule, simply drop a footnote and say it does not apply to Louisville because of the superior quality of the newspapers and the stations. I don't mean that in a facetious way.

COMMISSIONER HOOKS: Could we do that in a rule making?

MR. COHN: I don't know how you do that in rulemaking, but it does demonstrate an across-the-board prohibition of cross-ownership would be a tremendous injustice to the citizens of Louisville.

A reply to the question which has come up again and again, the worst that could happen is that we would have to sell our television station to someone else. I suggest to you that [452] there is not the tradition, there is not the commitment, there is not the involvement, there is not the dedication of an outside purchaser coming into Louisville and buying this television station who would operate in the manner that the Bingham family has operated it.

THE CHAIRMAN: The question is often asked by some of the proponents of the rule: Could not the Bingham family bring that outstanding operation to Washington, D.C., and the Evening Star or Washington Post take their tradition to Louisville? What is the answer to that?

MR. COHN: The answer is that this family since 1918 has been based in Louisville. They are committed to Louisville. They have rejected all offers to buy any media anywhere outside of Louisville. This is a community station, in effect. This is a community newspaper, in effect.

COMMISSIONER HOOKS: Don't you think that is a little unfair?

MR. COHN: In what way?

COMMISSIONER HOOKS: Depriving all these citizens of this excellent operation.

Go ahead.

MR. COHN: Mr. Chairman, I would like to end by proposing to you the specific rules which we are recommending to you that you adopt. You have heard some of this kind of language stated generally, but our proposal is that the Commission [453] itself should adopt rules which set forth the following basic principles:

In any kind of cross-ownership situation, the rule would require that there be separate sales staffs and no combination advertising rates.

The rule would require that there be separate editorial and reportorial staffs.

The rule would require that there be no discrimination policies or rates to media competitors.

The rule would require that in cross-ownership licensing it will not be permitted unless the related newspaper also agrees as part of the licensing process to carry fair program listings, accept on a non-discriminatory basis advertising from all broadcasting stations, and the licensee and the newspaper agree that there will be no discriminatory policy against advertisers who use competitive media.

What we are actually suggesting to you is not leaving to the good intentions and good will—

COMMISSIONER HOOKS: On the last point, are you saying it should be addressed to the newspaper?

MR. COHN: It should be part of the rule, yes, sir.

COMMISSIONER HOOKS: Just on the legal proposition, in light of the case out of Miami where the Supreme Court knocked down this right to apply law, what legal basis would you have for saying to the Louisville Courier-Journal—

[454] MR. COHN: If you go back, Commissioner, and read the Kansas City Star case where the Department of Justice brought a criminal antitrust law suit against the Kansas City Star and its cross-owned television station and was successful in that criminal case, and the court of appeals sustained that conviction, and go back and read the Mansfield Journal case and Lorraine Journal case, there is no doubt in my mind that if one entity publishes the newspaper at the same time as the licensee, the Commission, because it is the licensee, can require the newspaper to do certain things. The newspaper does not have to be licensee. It can say, "We don't want to comply." That is fine. Just give up the license.

But as long as you are licensed and coming to this Commission and asking for the license, one of the conditions of getting the license is that you do adopt these particular kinds of practices.

THE CHAIRMAN: Could we control a radio station or television station that owns a bowling-alley, control the rates they pay their pin-setters?

MR. COHN: No, because that is unrelated to the problem that you are particularly concerned with.

THE CHAIRMAN: To the extent that suppose we are interested in fairness, we are interested in diversity of viewpoint, could we impose a Fairness Doctrine on a newspaper-television cross-ownership?

[455] MR. COHN: I don't think so.

THE CHAIRMAN: I think it might tend to follow. I might not support that, but it would follow.

COMMISSIONER HOOKS: You say you have to list the other stations fairly. It is a little bit of the Fairness Doctrine superimposed.

MR. COHN: Yes, but not an editorial Fairness Doctrine.

COMMISSIONER HOOKS: It is a little Fairness Doctrine.

MR. COHN: It is a commercial fairness practice doctrine I am talking about.

Mr. Chairman, there were a number of other things I wanted to deal with. I wonder whether or not I could have leave to file within the next three or four days a separate written statement and distribute it to the Commissioners which includes some of the points which I want to make which because of the shortness of time I was unable to do.

THE CHAIRMAN: You are free to file anything and the Commission can look at it and give it the weight it wants to as to informal comment. I can't guarantee that it will be considered before we make a decision.

MR. COHN: Mr. Chairman, thank you very much. We appreciate it.

THE CHAIRMAN: Thank you very much, Mr. Cohn.

[Rand Corporation Study, R-1585-MF, "Newspaper-Television Station Cross-Ownership: Options for Federal Action" (September 1974), Tables 7-10]

TABLE 7
JOINTLY OWNED DAILY NEWSPAPERS AND TELEVISION STATIONS IN THE SAME MARKET

NO.	STATE	CITY	AREA OF DOMINANT INFLUENCE	ADI RANK	NAME OF NEWSPAPER	TV CALL SIGN	NETWORK AFF.	VHF OR UHF	LOCAL OWNERSHIP[a]	GROUP OWNERSHIP NAME OF GROUP OWNER	NUMBER OF GROUP OWNED DAILIES	NUMBER OF GROUP OWNED TV
1	ALA	ANNISTON	ANNISTON	193	ANNISTON STAR	WHMA	CBS	V	YES	ANNISTON STAR	2	1
2	ALA	BIRMINGHAM	BIRMINGHAM	47	BIRMINGHAM NEWS	WAPI	NBC	V	NO	NEWHOUSE NEWSPAPERS	16	6
3	ARK	LITTLE ROCK	LITTLE ROCK	55	ARKANSAS DEMOCRAT	KTHV	CBS	V	YES			
4	CAL	FRESNO	FRESNO	73	FRESNO BEE	KMJ	NBC	U	NO	MCCLATCHY	3	2
5	CAL	SACRAMENTO	SACRAMENTO-STOCKTON	26	SACRAMENTO BEE	KOVR	ABC	V	YES	MCCLATCHY	3	2
6	CAL	SAN FRANCISCO	SAN FRANCISCO	6	SAN FRANCISCO CHRONICLE	KRON	NBC	V	YES			
7	COL	DENVER	DENVER	29	DENVER POST	KHBC[a]	IND	U	NO	NEWHOUSE NEWSPAPERS	16	6
8	DC	WASHINGTON	WASHINGTON	9	WASHINGTON STAR	WMAL	ABC	V	YES	WASHINGTON STAR	1	3
9	DC	WASHINGTON	WASHINGTON	9	WASHINGTONPOST	WTOP	CBS	V	YES	POST NEWSWEEK	1	3
10	FLA	TAMPA	TAMPA-ST PETERSBURG	20	TAMPA TRIBUNE & TIMES	WFLA	NBC	V	NO	MEDIA GENERAL	3	1
11	GA	ALBANY	ALBANY	148	ALBANY HERALD	WALB	NBC*	V	YES	GRAY COMMUNICATIONS	1	3
12	GA	ATLANTA	ATLANTA	17	ATLANTA JOURNAL & CONSTITUTION	WSB	NBC	V	YES	J.H. COX	6	5
13	IDA	IDAHO FALLS	IDAHO FALLS-POCATELLO	172	IDAHO FALLS POST REGISTER	KIFI	NBC*	V	YES			
14	ILL	CHAMPAIGN	SPRINGFIELD-DECATUR-CHAMPAIGN	74	CHAMPAIGN COURIER & NEWS GAZETTE	WCIA	CBS	V	NO	MIDWEST TELEVISION/ LINDSAY-SCHAUR	0 6	3 1
15	ILL	CHICAGO	CHICAGO	3	CHICAGO TRIBUNE & CHICAGO TODAY	WGN	IND	V	YES	TRIBUNE CORPORATION	6	4

16	ILL	CHICAGO	CHICAGO	3	CHICAGO DAILY NEWS & SUN TIMES	WFLD	IND	U	YES			
17	ILL	QUINCY	QUINCY-HANNIBAL	124	QUINCY HERALD-WHIG	WGEM	NBC	V	YES			
18	ILL	ROCK ISLAND	DAVENPORT-ROCK ISLAND-MOLINE	67	ROCK ISLAND ARGUS	WHBF	CBS	V	YES			
19	IND	BLOOMINGTON	INDIANAPOLIS	18	BLOOMINGTON-BEDFORD COURIER TRIBUNE	WTTV	IND	V	YES			
20	IND	ELKHART	SOUTH BEND-ELKHART	87	ELKHART TRUTH	WSJV	ABC	V	YES			
21	IND	SOUTH BEND	SOUTH BEND-ELKHART	87	SOUTH BEND TRIBUNE	WSBT	CBS	U	YES	SOUTH BEND NEWS	7	2
22	IND	TERRE HAUTE	TERRE HAUTE	113	TERRE HAUTE STAR & TRIBUNE	WTHI	CBS*	V	YES			
23	IOWA	CEDAR RAPIDS	CEDAR RAPIDS-WATERLOO	70	CEDAR RAPIDS GAZETTE	KCRG	ABC	V	YES			
24	IOWA	DES MOINES	DES MOINES	62	DES MOINES REGISTER & TRIBUNE	KRNT	CBS	V	YES	COWLES COMMUNICATION	5	3
25	IOWA	MASON CITY	ROCHESTER-MASON CITY-AUSTIN	130	MASON CITY GLOBE GAZETTE	KGLO	CBS	V	NO	LEE ENTERPRISES	14	4
26	KAN	TOPEKA	TOPEKA	129	TOPEKA STATE JOURNAL & CAPITAL	WIBW	CBS	V	YES	STAUFFER PUBLICATION	14	2
27	KY	LOUISVILLE	LOUISVILLE	36	LOUISVILLE COURIER JOURNAL & TIMES	WHAS	CBS	V	YES			
28	KY	PADUCAH	PADUCAH-HARRISBURG-CAPE GIRARDEAU	72	PADUCAH SUN DEMOCRAT	WPSD	NBC	V	YES			
29	LA	BATON ROUGE	BATON ROUGE	101	BATON ROUGE ADVOCATE & STATE TIMES	WBRZ	NBC	V	YES			
30	LA	SHREVEPORT	SHREVEPORT-TEXARKANA	58	SHREVEPORT JOURNAL	KSLA	CBS	V	YES			
31	ME	PORTLAND	PORTLAND-POLAND SPRING	75	PORTLAND PRESS HERALD EXPRESS & TELEGRAM	WGAN	CBS	V	YES	GUY GANNETT PUBLIC.	3	2
32	MD	BALTIMORE	BALTIMORE	19	BALTIMORE NEWS AMERICAN	WBAL	NBC	V	NO	HEARST CORPORATION	7	3
33	MD	BALTIMORE	BALTIMORE	19	BALTIMORE SUN	WMAR	CBS	V	YES	A.S. ABELL	1	2
34	MICH	DETROIT	DETROIT	7	DETROIT NEWS	WWJ	NBC	V	YES	EVENING NEWS	1	3
35	MINN	DULUTH	DULUTH-SUPERIOR	110	DULUTH NEWS TRIBUNE & HERALD	WDSM	NBC	V	NO	RIDDER PUBLICATIONS	13	2
36	MINN	MINNEAPOLIS-ST PAUL	MINNEAPOLIS-ST PAUL	13	MINNEAPOLIS STAR & TRIBUNE; ST PAUL PIONEER PRESS & DISPATCH	WCCO	CBS	V	YES	JOHN COWLES RIDDER PUBLICATIONS	1 13	2 2

37	MISS	COLUMBUS	COLUMBUS	165	COLUMBUS COMMERCIAL DISPATCH	WCBI	NBC**	V	YES			
38	MISS	JACKSON	JACKSON	80	JACKSON CLARION-LEDGER & NEWS	WJTV	NBC	V	YES			
39	MISS	MERIDIAN	MERIDIAN	162	MERIDIAN STAR	WTOK	CBS*	V	YES			
40	MO	JOPLIN	JOPLIN-PITTSBURG	118	JOPLIN GLOBE	KOAM	NBC	V	YES	PULITZER PUBLICATION	2	2
41	MO	ST LOUIS	ST LOUIS	12	ST LOUIS POST DISPATCH	KSD	NBC	V	YES	NEWHOUSE NEWSPAPERS	16	6
42	MO	ST LOUIS	ST LOUIS	12	ST LOUIS GLOBE DEMOCRAT	KTVI	ABC	V	NO			
43	MO	SPRINGFIELD	SPRINGFIELD	88	SPINGFIED LEADER,NEWS & PRESS	KYTV	NBC	V	YES			
44	NEB	HASTINGS	LINCOLN-HASTINGS KEARNY	81	HASTINGS TRIBUNE	KHAS	NBC	V	YES			
45	NEB	OMAHA	OMAHA	63	OMAHA WORLD HERALD	KETV	ABC	V	YES			
46	NEV	LAS VEGAS	LAS VEGAS	144	LAS VEGAS REVIEW-JOURNAL	KORK	NBC	V	NO	DONREY MEDIA	25	1
47	NY	BUFFALO	BUFFALO	27	BUFFALO NEWS	WBEN	CBS	V	YES			
48	NY	NEW YORK CITY	NEW YORK CITY	1	NEW YORK DAILY NEWS	WPIX	IND	V	NO	TRIBUNE CORPORATION	6	4
49	NY	ROCHESTER	ROCHESTER	59	ROCHESTER TIMES-UNION, DEMOCRAT & CHRONICLE	WHEC	CBS	V	YES	GANNET NEWSPAPERS	22	1
50	NY	SYRACUSE	SYRACUSE	68	SYRACUSE HERALD JOURNAL, HERALD AMERICAN &POST	WSYR	NBC	V	YES	NEWHOUSE NEWSPAPERS	16	6
51	NY	WATERTOWN	WATERTOWN-CARTHAGE	163	WATERTOWN TIMES	WWNY	NBC**	V	YES			
52	NC	GREENSBORO	GREENSBORO-HIGH POINT-WINSTON SALEM	52	GREENSBORO DAILY NEWS & RECORD	WFMY	CBS	V	NO	LANDMARK COMMUNIC.	3	2
53	NC	HICKORY	CHARLOTTE	34	HICKORY RECORD	WHKY	IND	V	YES			
54	ND	FARGO	FARGO	95	FARGO FORUM	WDAY	NBC	V	YES			
55	OHIO	AKRON	CLEVELAND	8	AKRON BEACON JOURNAL	WAKR	ABC	U	NO	KNIGHT NEWSPAPERS	8	1
56	OHIO	CINCINNATI	CINCINNATI	23	CINCINNATI POST & TIMES STAR	WCPO	CBS	V	YES	SCRIPPS-HOWARD	15	5
57	OHIO	CLEVELAND	CLEVELAND	8	CLEVELAND PRESS & NEWS	WEWS	ABC	V	NO	SCRIPPS-HOWARD	15	5
58	OHIO	COLUMBUS	COLUMBUS	32	COLUMBUS DISPATCH	WBNS	CBS	V	YES			
59	OHIO	DAYTON	DAYTON	41	DAYTON NEWS & JOURNAL HERALD	WHIO	CBS	V	NO	J.M. COX	6	5
60	OHIO	YOUNGSTOWN	YOUNGSTOWN	85	YOUNGSTOWN VINDICATOR	WFMJ	NBC	V	YES			
61	OKLA	OKLAHOMA CITY	OKLAHOMA CITY	39	OKLAHOMA CITY OKLAHOMAN & TIMES	WKY	NBC	V	YES			
62	OREG	PORTLAND	PORTLAND	25	PORTLAND OREGONIAN & OREGON JOURNAL	KOIN	CBS	V	NO	NEWHOUSE NEWSPAPERS	16	6
63	PA	ERIE	ERIE	131	ERIE NEWS & TIMES	WSEE	CBS	U	YES			

64	PA	HARRISBURG	HARRISBURG-YORK-LANCASTER-LEBANON	45	HARRISBURG PATRIOT & NEWS	WTPA	ABC	U	NO	NEWHOUSE NEWSPAPERS	16	6
65	PA	JOHNSTOWN	JOHNSTOWN-ALTOONA	71	JOHNSTOWN TRIBUNE-DEMOCRAT	WJAC	NBC	V	YES			
66	PA	LANCASTER	HARRISBURG-YORK-LANCASTER-LEBANON	45	LANCASTER INTELLIGENCER, JOURNAL, NEW ERA & NEWS	WGAL	NBC	V	YES	STEINMAN STATIONS	1	2
67	SC	GREENVILLE	GREENVILLE-SPARTANBURG-ASHEVILLE	38	GREENVILLE NEWS PIEDMONT	WFBC	NBC	V	YES	MULTIMEDIA NEWS	4	1
68	TENN	MEMPHIS	MEMPHIS	31	MEMPHIS COMMERCIAL APPEAL & PRESS SCIMITAR	WMC	NBC	V	NO	SCRIPPS-HOWARD	15	5
69	TEX	DALLAS	DALLAS-FT WORTH	11	DALLAS TIMES-HERALD	KDFW	CBS	V	NO	TIMES MIRROR	4	1
70	TEX	DALLAS	DALLAS-FT WORTH	11	DALLAS MORNING NEWS	WFAA	ABC	V	YES	A.H. BELO	7	2
71	TEX	HOUSTON	HOUSTON	14	HOUSTON POST	KPRC	NBC	V	YES			
72	TEX	TEMPLE	TEMPLE-WACO	108	TEMPLE TELEGRAM	KCEN	NBC	V	YES			
73	TEX	TEXARKANA	SHREVEPORT-TEXARKANA	58	TEXARKANA GAZETTE & NEWS	KTAL	NBC	V	YES			
74	UTAH	OGDEN	SALT LAKE CITY	50	OGDEN STANDARD	KUTV	NBC	V	NO	STANDARD CORPORATION	1	3
75	UTAH	SALT LAKE CITY	SALT LAKE CITY	50	SALT LAKE CITY DESERET NEWS	KSL	CBS	V	YES	BONNEVILLE INTRNTNL	1	2
76	VA	NORFOLK-PORTSMOUTH	NORFOLK-HAMPTON-PORTSMOUTH-NEWPORT NEWS	46	NORFOLK VIRGINIAN PILOT & LEDGER STAR	WTAR	CBS	V	YES	LANDMARK COMMUNIC	3	2
77	WASH	SPOKANE	SPOKANE	77	SPOKANE SPOKESMAN, REVIEW & CHRONICLE	KHQ	NBC	V	YES			
78	WVA	BLUEFIELD	BLUEFIELD-OAK HILL-BECKLEY	132	BLUEFIELD TELEGRAPH & SUNSET NEWS OBSERVER	WHIS	NBC	V	YES	DAILY TELEGRAPH	1	2
79	WISC	MILWAUKEE	MILWAUKEE	24	MILWAUKEE JOURNAL & SENTINEL	WTMJ	NBC	V	YES			
80	WISC	WAUSAU	WAUSAU-RHINELANDER	135	WAUSAU RECORD HERALD	WSAU	CBS	V	YES			

SOURCES: TELEVISION FACTBOOK,1973-1974 EDITION; BROADCASTING YEARBOOK,1973; EDITOR AND PUBLISHER,1973 YEARBOOK

NOTES: ~ THE DENVER POST HOLDS A CONSTRUCTION PERMIT FOR KHBC. THE STATION WAS NOT ON THE AIR DURING 1973.

& A GROUP OWNER IS CONSIDERED "LOCAL" IF HEADQUARTERED IN THE COMBINATION'S HOME CITY.

* AFFILIATED WITH ABC

** ALSO AFFILIATED WITH ABC AND CBS

TABLE 8
DAILY NEWSPAPER COMPETITION FACING NEWSPAPER-TELEVISION COMBINATIONS

NUMBER	STATE	CITY	AREA OF DOMINANT INFLUENCE	ADI RANK	NAME OF NEWSPAPER	TV CALL SIGN	DAILY NEWSPAPER COMPETITION: CITY COMPETITORS	CITY SHARE	COUNTY COMPETITORS	COUNTY SHARE	SMSA COMPETITORS	SMSA SHARE	ADI COMPETITORS	ADI SHARE
1	ALA	ANNISTON	ANNISTON	193	ANNISTON STAR	WHMA	0	100	0	100		NA[b]	0	100
2	ALA	BIRMINGHAM	BIRMINGHAM	47	BIRMINGHAM NEWS	WAPI	0	100	0	100	1	95	3	84
3	ARK	LITTLE ROCK	LITTLE ROCK	55	ARKANSAS DEMOCRAT	KTHV	1	41	1	41	1	42	4	32
4	CAL	FRESNO	FRESNO	73	FRESNO BEE	KMJ	0	100	0	100	0	100	5	67
5	CAL	SACRAMENTO	SACRAMENTO-STOCKTON	26	SACRAMENTO BEE	KOVR	1	62	1	62	3	60	12	36
6	CAL	SAN FRANCISCO	SAN FRANCISCO	6	SAN FRANCISCO CHRONICLE	KRON	0	100	0	100	15	50	21	40
7	COL	DENVER	DENVER	29	DENVER POST	KHBC~	1	53	1	53	4	50	12	45
8	DC	WASHINGTON	WASHINGTON	9	WASHINGTON STAR	WMAL	1	51	1	51	3	44	13	37
9	DC	WASHINGTON	WASHINGTON	9	WASHINGTONPOST	WTOP	1	49	1	49	3	51	13	44
10	FLA	TAMPA	TAMPA-ST PETERSBURG	20	TAMPA TRIBUNE & TIMES	WFLA	0	100	0	100	2	39	7	34
11	GA	ALBANY	ALBANY	148	ALBANY HERALD	WALB	0	100	0	100	0	100	1	80
12	GA	ATLANTA	ATLANTA	17	ATLANTA JOURNAL & CONSTITUTION	WSB	0	100	0	100	2	92	5	84
13	IDA	IDAHO FALLS	IDAHO FALLS-POCATELLO	172	IDAHO FALLS POST REGISTER	KIFI	0	100	0	100		NA	1	58
14	ILL	CHAMPAIGN	SPRINGFIELD-DECATUR-CHAMPAIGN	74	CHAMPAIGN COURIER & NEWS GAZETTE	WCIA	0	100[c]	0	100[c]	0	100[c]	8	25[c]
15	ILL	CHICAGO	CHICAGO	3	CHICAGO TRIBUNE & CHICAGO TODAY	WGN	2	49	11	50	17	47	31	42
16	ILL	CHICAGO	CHICAGO	3	CHICAGO DAILY NEWS & SUN TIMES	WFLD	2	50	11	47	17	42	31	37
17	ILL	QUINCY	QUINCY-HANNIBAL	124	QUINCY HERALD-WHIG	WGEM	0	100	0	100		NA	6	37
18	ILL	ROCK ISLAND	DAVENPORT-ROCK ISLAND-MOLINE	67	ROCK ISLAND ARGUS	WHBF	0	100	1	41	3	19	10	11
19	IND	BLOOMINGTON	INDIANAPOLIS	18	BLOOMINGTON-BEDFORD COURIER TRIBUNE	WTTV	1	d	1	d		NA	1	d
20	IND	ELKHART	SOUTH BEND-ELKHART	87	ELKHART TRUTH	WSJV	0	100	1	71	1	71	5	17
21	IND	SOUTH BEND	SOUTH BEND-ELKHART	87	SOUTH BEND TRIBUNE	WSBT	0	100	0	100	1	91	5	61
22	IND	TERRE HAUTE	TERRE HAUTE	113	TERRE HAUTE STAR & TRIBUNE	WTHI	0	100	0	100	0	100	7	51

23	IOWA	CEDAR RAPIDS	CEDAR RAPIDS-WATERLOO	70	CEDAR RAPIDS GAZETTE	KCRG	0	100	0	100	0	100	6	40
24	IOWA	DES MOINES	DES MOINES	62	DES MOINES REGISTER & TRIBUNE	KRNT	0	100	0	100	0	100	10	71
25	IOWA	MASON CITY	ROCHESTER-MASON CITY-AUSTIN	130	MASON CITY GLOBE GAZETTE	KGLO	0	100	0	100		NA	4	30
26	KAN	TOPEKA	TOPEKA	129	TOPEKA STATE JOURNAL & CAPITAL	WIBW	0	100	0	100	0	100	5	72
27	KY	LOUISVILLE	LOUISVILLE	36	LOUISVILLE COURIER JOURNAL & TIMES	WHAS	0	100	0	100	1	96	5	87
28	KY	PADUCAH	PADUCAH-HARRIS-BURG-CAPE GIRARDEAU	72	PADUCAH SUN DEMOCRAT	WPSD	0	100	0	100		NA	6	27
29	LA	BATON ROUGE	BATON ROUGE	101	BATON ROUGE ADVOCATE & STATE TIMES	WBRZ	0	100	0	100	0	100	1	96
30	LA	SHREVEPORT	SHREVEPORT-TEXARKANA	58	SHREVEPORT JOURNAL	KSLA	0	100	0	100	0	100	6	59
31	ME	PORTLAND	PORTLAND-POLAND SPRING	75	PORTLAND PRESS HERALD EXPRESS & TELEGRAM	WGAN	0	100	0	100	0	100	7	43
32	MD	BALTIMORE	BALTIMORE	19	BALTIMORE NEWS AMERICAN	WBAL	1	36	1	36	2	35	3	34
33	MD	BALTIMORE	BALTIMORE	19	BALTIMORE SUN	WMAR	1	64	1	64	2	62	3	61
34	MICH	DETROIT	DETROIT	7	DETROIT NEWS	WWJ	1	62	2	61	6	49	9	46
35	MINN	DULUTH	DULUTH-SUPERIOR	110	DULUTH NEWS TRIBUNE & HERALD	WDSM	0	100	2	73	3	65	5	62
36	MINN	MINNEAPOLIS-ST PAUL	MINNEAPOLIS-ST PAUL	13	MINNEAPOLIS STAR & TRIBUNE; ST PAUL PIONEER PRESS & DISPATCH	WCCO	0	100[c]	0	100[c,e]	0	100[c]	7	89[c]
37	MISS	COLUMBUS	COLUMBUS	165	COLUMBUS COMMERCIAL DISPATCH	WCRI	0	100	0	100		NA	0	100
38	MISS	JACKSON	JACKSON	80	JACKSON CLARION-LEDGER & NEWS	WJTV	0	100	0	100	0	100	2	80
39	MISS	MERIDIAN	MERIDIAN	162	MERIDIAN STAR	WTOK	0	100	0	100	0	100	0	100
40	MO	JOPLIN	JOPLIN-PITTSBURG	118	JOPLIN GLOBE	KOAM	0	100	1	76	1	81	9	36
41	MO	ST LOUIS	ST LOUIS	12	ST LOUIS POST DISPATCH	KSD	1	59	1	59	5	46	8	43
42	MO	ST LOUIS	ST LOUIS	12	ST LOUIS GLOBE DEMOCRAT	KTVI	1	41	1	41	5	38	8	37
43	MO	SPRINGFIELD	SPRINGFIELD	88	SPINGFIED LEADER,NEWS & PRESS	KYTV	0	100	0	100	0	100	2	90
44	NEB	HASTINGS	LINCOLN-HASTINGS KEARNY	81	HASTINGS TRIBUNE	KHAS	0	100	0	100		NA	7	12
45	NEB	OMAHA	OMAHA	63	OMAHA WORLD HERALD	KETV	0	100	0	100	1	89	6	77
46	NEV	LAS VEGAS	LAS VEGAS	144	LAS VEGAS REVIEW-JOURNAL	KORK	1	61	1	61	1	61	1	61
47	NY	BUFFALO	BUFFALO	27	BUFFALO NEWS	WBEN	1	70	1	71[e]	4	58	12	48
48	NY	NEW YORK CITY	NEW YORK CITY	1	NEW YORK DAILY NEWS	WPIX	2	34[e]	5	50[e]	15	44	42	32
49	NY	ROCHESTER	ROCHESTER	59	ROCHESTER TIMES-UNION, DEMOCRAT & CHRONICLE	WHFC	0	100	0	100	3	93	3	93
50	NY	SYRACUSE	SYRACUSE	68	SYRACUSE HERALD JOURNAL, HERALD AMERICAN &POST	WSYR	0	100	0	100	2	91	5	76
51	NY	WATERTOWN	WATERTOWN-CARTHAGE	163	WATERTOWN TIMES	WWNY	0	100	0	100		NA	1	87
52	NC	GREENSBORO	GREENSBORO-HIGH POINT-WINSTON SALEM	52	GREENSBORO DAILY NEWS & RECORD	WFMY	0	100	1	79	5	35	6	35
53	NC	HICKORY	CHARLOTTE	34	HICKORY RECORD	WHKY	0	100	0	100		NA	21	7
54	ND	FARGO	FARGO	95	FARGO FORUM	WDAY	0	100	0	100	0	100	4	51
55	OHIO	AKRON	CLEVELAND	8	AKRON BEACON JOURNAL	WAKR	0	100	0	100	1	87	24	13
56	OHIO	CINCINNATI	CINCINNATI	23	CINCINNATI POST & TIMES STAR	WCPO	1	52	1	52	1	55	6	45
57	OHIO	CLEVELAND	CLEVELAND	8	CLEVELAND PRESS & NEWS	WEWS	1	52	1	52	5	48	24	27
58	OHIO	COLUMBUS	COLUMBUS	32	COLUMBUS DISPATCH	WBNS	0	100	0	100	4	89	23	69
59	OHIO	DAYTON	DAYTON	41	DAYTON NEWS & JOURNAL HERALD	WHIO	0	100	0	100	3	87	10	63
60	OHIO	YOUNGSTOWN	YOUNGSTOWN	85	YOUNGSTOWN VINDICATOR	WFMJ	0	100	0	100	2	66	4	55
61	OKLA	OKLAHOMA CITY	OKLAHOMA CITY	39	OKLAHOMA CITY OKLAHOMAN & TIMES	WKY	1	79	1	79	3	74	13	62
62	OREG	PORTLAND	PORTLAND	25	PORTLAND OREGONIAN & OREGON JOURNAL	KOIN	0	100	0	100	1	89	8	65
63	PA	ERIE	ERIE	131	ERIE NEWS & TIMES	WSEE	0	100	0	100	0	100	3	68
64	PA	HARRISBURG	HARRISBURG-YORK-LANCASTER-LEBANON	45	HARRISBURG PATRIOT & NEWS	WTPA	0	100	0	100	1	89	9	32
65	PA	JOHNSTOWN	JOHNSTOWN-ALTOONA	71	JOHNSTOWN TRIBUNE-DEMOCRAT	WJAC	0	100	0	100	1	89	14	27
66	PA	LANCASTER	HARRISBURG-YORK-LANCASTER-LEBANON	45	LANCASTER INTELLIGENCER, JOURNAL, NEW ERA & NEWS	WGAL	0	100	1	96		NA	9	26
67	SC	GREENVILLE	GREENVILLE-SPARTANBURG-ASHEVILLE	38	GREENVILLE NEWS PIEDMONT	WFBC	0	100	0	100	1	67	6	37
68	TENN	MEMPHIS	MEMPHIS	31	MEMPHIS COMMERCIAL APPEAL & PRESS SCIMITAR	WMC	0	100	0	100	0	100	6	89
69	TEX	DALLAS	DALLAS-FT WORTH	11	DALLAS TIMES-HERALD	KDFW	1	52	5	47	12	30	20	26
70	TEX	DALLAS	DALLAS-FT WORTH	11	DALLAS MORNING NEWS	WFAA	1	48	5	43	12	28	20	26
71	TEX	HOUSTON	HOUSTON	14	HOUSTON POST	KPRC	1	48	3	45	4	45	7	43
72	TEX	TEMPLE	TEMPLE-WACO	108	TEMPLE TELEGRAM	KCEN	0	100	1	65	1	62	4	24

73	TEX	TEXARKANA	SHREVEPORT-TEXARKANA	58	TEXARKANA GAZETTE & NEWS	KTAL	0	100	0	100	0	100	6	15
74	UTAH	OGDEN	SALT LAKE CITY	50	OGDEN STANDARD	KUTV	0	100	0	100	1	23	6	17
75	UTAH	SALT LAKE CITY	SALT LAKE CITY	50	SALT LAKE CITY DESERET NEWS	KSL	0	100	0	100	1	77	6	68
76	VA	NORFOLK-PORTSMOUTH	NORFOLK-HAMPTON-PORTSMOUTH-NEWPORT NEWS	46	NORFOLK VIRGINIAN PILOT & LEDGER STAR	WTAR	0	100	0	100	0	100	3	67
77	WASH	SPOKANE	SPOKANE	77	SPOKANE SPOKESMAN, REVIEW & CHRONICLE	KHQ	0	100	0	100	0	100	6	74
78	WVA	BLUEFIELD	BLUEFIELD-OAK HILL-BECKLEY	132	BLUEFIELD TELEGRAPH & SUNSET NEWS OBSERVER	WHIS	0	100	0	100		NA	3	37
79	WISC	MILWAUKEE	MILWAUKEE	24	MILWAUKEE JOURNAL & SENTINEL	WTMJ	0	100	0	100	2	94	6	80
80	WISC	WAUSAU	WAUSAU-RHINELANDER	135	WAUSAU RECORD HERALD	WSAU	0	100	0	100		NA	5	33

SOURCES: TELEVISION FACTBOOK, 1973-1974 EDITION; CIRCULATION 73-74

NOTES:

[a] THE DENVER POST HOLDS A CONSTRUCTION PERMIT FOR KHBC. THE STATION WAS NOT ON THE AIR DURING 1973.

[b] NA IS ENTERED FOR THOSE CITIES NOT INCLUDED IN AN SMSA AS OF NOVEMBER 1, 1973.

[c] TWO NEWSPAPERS EACH OWN PART OF THE TELEVISION STATION. CONSEQUENTLY, THEIR NEWSPAPER CIRCULATION SHARES ARE COMBINED.

[d] CIRCULATION FIGURES NOT REPORTED.

[e] INCLUDES BOTH HENNEPIN (MINNEAPOLIS) AND RAMSEY (ST. PAUL) COUNTIES.

[f] "CITY" INCLUDES MANHATTAN ONLY. "COUNTY" INLUDES THE FIVE BOROUGHS OF NEW YORK.

TABLE 9
COMMERCIAL TELEVISION COMPETITION FACING NEWSPAPER-TELEVISION COMBINATIONS

NUMBER	STATE	CITY	AREA OF DOMINANT INFLUENCE	ADI RANK	NAME OF NEWSPAPER	TV CALL SIGN	COMMERCIAL TELEVISION COMPETITION [a,b] CITY TV OTHER TV UHF PRIME SHARE	COUNTY TV OTHER TV UHF PRIME SHARE	SMSA TV OTHER TV UHF PRIME SHARE	ADI TV OTHER TV UHF PRIME SHARE
1	ALA	ANNISTON	ANNISTON	193	ANNISTON STAR	WHMA	0 0 0 100	0 0 0 100	NA[c]	0 0 0 100
2	ALA	BIRMINGHAM	BIRMINGHAM	47	BIRMINGHAM NEWS	WAPI	2 1 1 32	2 1 1 32	2 1 1 32	2 1 1 29
3	ARK	LITTLE ROCK	LITTLE ROCK	55	ARKANSAS DEMOCRAT	KTHV	2 2 0 33	2 2 0 33	2 2 0 33	2 2 0 30
4	CAL	FRESNO	FRESNO	73	FRESNO BEE	KMJ	3 0 3 36	3 0 3 36	3 0 3 32	5 0 5 32
5	CAL	SACRAMENTO	SACRAMENTO-STOCKTON	26	SACRAMENTO BEE	KOVR	3 2 1 24	3 2 1 24	3 2 1 34	4 2 2 31
6	CAL	SAN FRANCISCO	SAN FRANCISCO	6	SAN FRANCISCO CHRONICLE	KRON	6 3 3 25	6 3 3 25	6 3 3 28	9 4 5 26
7	COL	DENVER	DENVER	29	DENVER POST	KHBC[a]	4 4 0	4 4 0	4 4 0	4 4 0
8	DC	WASHINGTON	WASHINGTON	9	WASHINGTON STAR	WMAL	4 3 1 26	4 3 1 26	4 3 1 33	5 3 2 31
9	DC	WASHINGTON	WASHINGTON	9	WASHINGTONPOST	WTOP	4 3 1 26	4 3 1 26	4 3 1 29	5 3 2 28
10	FLA	TAMPA	TAMPA-ST PETERSBURG	20	TAMPA TRIBUNE & TIMES	WFLA	4 2 2 36	4 2 2 36	4 2 2 36	5 2 3 37
11	GA	ALBANY	ALBANY	148	ALBANY HERALD	WALB	0 0 0 100	0 0 0 100	0 0 0 100	0 0 0 100
12	GA	ATLANTA	ATLANTA	17	ATLANTA JOURNAL & CONSTITUTION	WSB	4 2 2 37	4 2 2 37	4 2 2 33	4 2 2 31
13	IDA	IDAHO FALLS	IDAHO FALLS-POCATELLO	172	IDAHO FALLS POST REGISTER	KIFI	1 1 0 55	1 1 0 55	NA	1 1 0 45
14	ILL	CHAMPAIGN	SPRINGFIELD-DECATUR-CHAMPAIGN	74	CHAMPAIGN COURIER & NEWS GAZETTE	WCIA	1 0 1 66	1 0 1 66	1 0 1 68	3 0 3 40
15	ILL	CHICAGO	CHICAGO	3	CHICAGO TRIBUNE & CHICAGO TODAY	WGN	6 3 3 12	6 3 3 12	6 3 3 10	6 3 3 10
16	ILL	CHICAGO	CHICAGO	3	CHICAGO DAILY NEWS & SUN TIMES	WFLD	6 4 2 3	6 4 2 3	6 4 2 3	6 4 2 3
17	ILL	QUINCY	QUINCY-HANNIBAL	124	QUINCY HERALD-WHIG	WGEM	0 0 0 100	0 0 0 100	NA	1 1 0 45
18	ILL	ROCK ISLAND	DAVENPORT-ROCK ISLAND-MOLINE	67	ROCK ISLAND ARGUS	WHBF	0 0 0 100	0 0 0 100	2 2 0 38	2 2 0 37
19	IND	BLOOMINGTON	INDIANAPOLIS	18	BLOOMINGTON-BEDFORD COURIER TRIBUNE	WTTV	0 0 0 100	0 0 0 100	NA	4 3 1 10
20	IND	ELKHART	SOUTH BEND-ELKHART	87	ELKHART TRUTH	WSJV	0 0 0 100	0 0 0 100	0 0 0 100	2 0 2 31
21	IND	SOUTH BEND	SOUTH BEND-ELKHART	87	SOUTH BEND TRIBUNE	WSBT	1 0 1 55	1 0 1 55	1 0 1 57	2 0 2 35
22	IND	TERRE HAUTE	TERRE HAUTE	113	TERRE HAUTE STAR & TRIBUNE	WTHI	2 1 1 57	2 1 1 57	2 1 1 47	2 1 1 58

23	IOWA	CEDAR RAPIDS	CEDAR RAPIDS-WATERLOO	70	CEDAR RAPIDS GAZETTE	KCRG	2	2	0	37	2	2	0	37	2	2	0	33	3	3	1	25
24	IOWA	DES MOINES	DES MOINES	62	DES MOINES REGISTER & TRIBUNE	KRNT	2	2	0	41	2	2	0	41	2	2	0	39	3	2	1	32
25	IOWA	MASON CITY	ROCHESTER-MASON CITY-AUSTIN	130	MASON CITY GLOBE GAZETTE	KGLO	0	0	0	100	0	0	0	100				NA	2	2	0	36
26	KAN	TOPEKA	TOPEKA	129	TOPEKA STATE JOURNAL & CAPITAL	WIBW	1	0	1	67	1	0	1	67	1	0	1	70	1	0	1	76
27	KY	LOUISVILLE	LOUISVILLE	36	LOUISVILLE COURIER JOURNAL & TIMES	WHAS	3	1	2	33	3	1	2	33	3	1	2	35	3	1	2	36
28	KY	PADUCAH	PADUCAH-HARRIS-BURG-CAPE GIRARDEAU	72	PADUCAH SUN DEMOCRAT	WPSD	1	0	1	67	1	0	1	67				NA	3	2	1	35
29	LA	BATON ROUGE	BATON ROUGE	101	BATON ROUGE ADVOCATE & STATE TIMES	WBRZ	2	1	1	41	2	1	1	41	2	1	1	41	2	1	1	42
30	LA	SHREVEPORT	SHREVEPORT-TEXARKANA	58	SHREVEPORT JOURNAL	KSLA	1	1	0	55	1	1	0	55	1	1	0	40	2	2	0	39
31	ME	PORTLAND	PORTLAND-POLAND SPRING	75	PORTLAND PRESS HERALD EXPRESS & TELEGRAM	WGAN	2	1	0	50	2	2	0	39	2	2	0	51	3	2	1	33
32	MD	BALTIMORE	BALTIMORE	19	BALTIMORE NEWS AMERICAN	WBAL	3	2	1	30	3	2	1	30	3	2	1	29	3	2	1	32
33	MD	BALTIMORE	BALTIMORE	19	BALTIMORE SUN	WMAR	3	2	1	38	3	2	1	38	3	2	1	35	3	2	1	34
34	MICH	DETROIT	DETROIT	7	DETROIT NEWS	WWJ	4	2	2	34	4	2	2	34	5	3	2	29	5	3	2	29
35	MINN	DULUTH	DULUTH-SUPERIOR	110	DULUTH NEWS TRIBUNE & HERALD	WDSM	2	2	0	28	2	2	0	28	2	2	0	26	2	2	0	24
36	MINN	MINNEAPOLIS-ST PAUL	MINNEAPOLIS-ST PAUL	13	MINNEAPOLIS STAR & TRIBUNE; ST PAUL PIONEER PRESS & DISPATCH	WCCO	3	3	0	45	3	3	0	45	3	3	0	34	3	3	0	32
37	MISS	COLUMBUS	COLUMBUS	165	COLUMBUS COMMERCIAL DISPATCH	WCBI	0	0	0	100	0	0	0	100				NA	0	0	0	100
38	MISS	JACKSON	JACKSON	80	JACKSON CLARION-LEDGER & NEWS	WJTV	2	1	1	38	2	1	1	38	2	1	1	41	2	1	1	42
						WTOK	1	0	1	99	1	0	1	99				NA	1	0	1	100
39	MISS	MERIDIAN	MERIDIAN	162	MERIDIAN STAR	KOAM	2	1	1	32	2	1	1	32	2	1	1	34	2	1	1	41
40	MO	JOPLIN	JOPLIN-PITTSBURG	118	JOPLIN GLOBE	KSD	4	3	1	28	4	3	1	28	4	3	1	29	4	3	1	29
41	MO	ST LOUIS	ST LOUIS	12	ST LOUIS POST DISPATCH	KTVI	4	3	1	27	4	3	1	27	4	3	1	28	4	3	1	26
42	MO	ST LOUIS	ST LOUIS	12	ST LOUIS GLOBE DEMOCRAT																	
43	MO	SPRINGFIELD	SPRINGFIELD	88	SPINGFIED LEADER,NEWS & PRESS	KYTV	2	1	1	37	2	1	1	37	2	1	1	31	2	1	1	44
44	NEB	HASTINGS	LINCOLN-HASTINGS KEARNY	81	HASTINGS TRIBUNE	KHAS	0	0	0	100	0	0	0	100				NA	2	2	0	12
45	NEB	OMAHA	OMAHA	63	OMAHA WORLD HERALD	KETV	2	2	0	33	2	2	0	33	2	2	0	38	2	2	0	34
46	NEV	LAS VEGAS	LAS VEGAS	144	LAS VEGAS REVIEW-JOURNAL	KORK	2	2	0	37	3	3	0	35	3	3	0	30	3	3	0	30

47	NY	BUFFALO	BUFFALO	27	BUFFALO NEWS	WBEN	3	2	1	34	3	2	1	34	3	2	1	31	3	2	1	32
48	NY	NEW YORK CITY	NEW YORK CITY	1	NEW YORK DAILY NEWS	WPIX	6	5	1	4	6	5	1	5	6	5	1	5	7	6	2	4
49	NY	ROCHESTER	ROCHESTER	59	ROCHESTER TIMES-UNION, DEMOCRAT & CHRONICLE	WHEC	2	2	0	36	2	2	0	36	2	2	0	34	2	2	0	34
50	NY	SYRACUSE	SYRACUSE	68	SYRACUSE HERALD JOURNAL, HERALD AMERICAN &POST	WSYR	2	2	0	34	2	2	0	34	2	2	0	30	2	2	0	27
51	NY	WATERTOWN	WATERTOWN-CARTHAGE	163	WATERTOWN TIMES	WWNY	0	0	0	100	0	0	0	100				NA	0	0	0	100
52	NC	GREENSBORO	GREENSBORO-HIGH POINT-WINSTON SALEM	52	GREENSBORO DAILY NEWS & RECORD	WFMY	0	0	0	100	1	1	0	38	2	2	0	38	2	2	0	36
53	NC	HICKORY	CHARLOTTE	34	HICKORY RECORD	WHKY	0	0	0	9	0	0	0	9				NA	4	2	2	9
54	ND	FARGO	FARGO	95	FARGO FORUM	WDAY	1	1	0	53	1	1	0	53	1	1	0	55	2	2	0	24
55	OHIO	AKRON	CLEVELAND	8	AKRON BEACON JOURNAL	WAKR	0	0	0	100	0	0	0	100	0	0	0	100	5	3	2	1
56	OHIO	CINCINNATI	CINCINNATI	23	CINCINNATI POST & TIMES STAR	WCPO	3	2	1	36	3	2	1	36	3	2	1	38	3	2	1	37
57	OHIO	CLEVELAND	CLEVELAND	8	CLEVELAND PRESS & NEWS	WEWS	3	2	1	32	4	2	2	30	4	2	2	34	5	2	3	32
58	OHIO	COLUMBUS	COLUMBUS	32	COLUMBUS DISPATCH	WBNS	2	2	0	37	2	2	0	37	2	2	0	44	2	2	0	42
59	OHIO	DAYTON	DAYTON	41	DAYTON NEWS & JOURNAL HERALD	WHIO	2	1	1	44	2	1	1	44	2	1	1	44	2	1	1	46
60	OHIO	YOUNGSTOWN	YOUNGSTOWN	85	YOUNGSTOWN VINDICATOR	WFMJ	2	0	2	35	2	0	2	35	2	0	2	32	2	0	2	32
61	OKLA	OKLAHOMA CITY	OKLAHOMA CITY	39	OKLAHOMA CITY OKLAHOMAN & TIMES	WKY	2	2	0	37	2	2	0	37	2	2	0	31	3	3	0	31
62	OREG	PORTLAND	PORTLAND	25	PORTLAND OREGONIAN & OREGON JOURNAL	KOIN	3	3	0	31	3	3	0	31	3	3	0	33	4	4	0	33
63	PA	ERIE	ERIE	131	ERIE NEWS & TIMES	WSEE	2	1	1	32	2	1	1	32	2	1	1	33	2	1	1	28
64	PA	HARRISBURG	HARRISBURG-YORK-LANCASTER-LEBANON	45	HARRISBURG PATRIOT & NEWS	WTPA	1	1	0	49	1	1	0	49	1	1	0	54	4	1	3	26
65	PA	JOHNSTOWN	JOHNSTOWN-ALTOONA	71	JOHNSTOWN TRIBUNE-DEMOCRAT	WJAC	1	0	1	82	1	0	1	82	1	0	1	86	2	1	1	44
66	PA	LANCASTER	HARRISBURG-YORK-LANCASTER-LEBANON	45	LANCASTER INTELLIGENCER, JOURNAL, NEW ERA & NEWS	WGAL	1	0	1	77	1	0	1	77	1	0	1	83	4	0	4	41
67	SC	GREENVILLE	GREENVILLE-SPARTANBURG-ASHEVILLE	38	GREENVILLE NEWS PIEDMONT	WFBC	1	0	1	41	1	0	1	41	2	1	1	34	5	2	3	32
68	TENN	MEMPHIS	MEMPHIS	31	MEMPHIS COMMERCIAL APPEAL & PRESS SCIMITAR	WMC	2	2	0	32	2	2	0	32	2	2	0	29	2	2	0	29
69	TEX	DALLAS	DALLAS-FT WORTH	11	DALLAS TIMES-HERALD	KDFW	5	1	2	43	3	1	2	43	5	3	2	31	5	3	2	31
70	TEX	DALLAS	DALLAS-FT WORTH	11	DALLAS MORNING NEWS	WFAA	5	1	2	51	3	1	2	51	5	3	2	35	5	3	2	33

71	TEX	HOUSTON	HOUSTON	14	HOUSTON POST	KPRC	4	2	2	33	4	2	2	33	4	2	2	29	4	2	2	28
72	TEX	TEMPLE	TEMPLE-WACO	108	TEMPLE TELEGRAM	KCEN	0	0	0	100	0	0	0	100	0	0	0	100	1	1	0	40
73	TEX	TEXARKANA	SHREVEPORT-TEXARKANA	58	TEXARKANA GAZETTE & NEWS	KTAL	0	0	0	100	0	0	0	100	0	0	0	100	2	2	0	23
74	UTAH	OGDEN	SALT LAKE CITY	50	OGDEN STANDARD	KUTV	2	2	0	30	2	2	0	30	2	2	0	23	2	2	0	23
75	UTAH	SALT LAKE CITY	SALT LAKE CITY	50	SALT LAKE CITY DESERET NEWS	KSL	2	2	0	32	2	2	0	32	2	2	0	35	2	2	0	34
76	VA	NORFOLK-PORTSMOUTH	NORFOLK-HAMPTON-PORTSMOUTH-NEWPORT NEWS	46	NORFOLK VIRGINIAN PILOT & LEDGER STAR	WTAR	0	0	0	100	2	1	1	54	2	1	1	42	3	2	1	42
77	WASH	SPOKANE	SPOKANE	77	SPOKANE SPOKESMAN, REVIEW & CHRONICLE	KHQ	2	2	0	36	2	2	0	36	2	2	0	33	2	2	0	28
78	WVA	BLUEFIELD	BLUEFIELD-OAK HILL-BECKLEY	132	BLUEFIELD TELEGRAPH & SUNSET NEWS OBSERVER	WHIS	0	0	0	100	0	0	0	100				NA	1	1	0	60
79	WISC	MILWAUKEE	MILWAUKEE	24	MILWAUKEE JOURNAL & SENTINEL	WTMJ	3	2	1	32	3	2	1	32	3	2	1	31	3	2	1	30
80	WISC	WAUSAU	WAUSAU-RHINELANDER	135	WAUSAU RECORD HERALD	WSAU	1	1	0	59	1	1	0	59				NA	2	2	0	55

SOURCES: TELEVISION FACTBOOK,1973-1974 EDITION; ARBITRON SHARE OF HOURS STUDY: 1973 COUNTY REPORTS; ARBITRON TELEVISION DAY-PART AUDIENCE SUMMARY, NOVEMBER 1973; RAND-MCNALLY 1974 COMMERCIAL ATLAS AND MARKETING GUIDE.

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NOTES:

[a] EDUCATIONAL TELEVISION STATIONS ARE NOT INCLUDED IN THE COUNTS OF COMPETING TELEVISION STATIONS, NOR ARE THEIR AUDIENCES CONSIDERED IN MEASURING THE PRIME TIME SHARES OF CROSSOWNED STATIONS. SATELLITES OF COMPETING STATIONS ARE ALSO EXCLUDED FROM THE COUNTS OF COMPETING STATIONS. SATELLITES' AUDIENCES ARE, HOWEVER, INCLUDED AS PART OF THEIR PARENT STATION'S AUDIENCE IF THE SATELLITE OPERATES WITHIN THE APPROPRIATE GEOGRAPHIC BOUNDS.

[b] CITY AND COUNTY SHARES ARE BOTH CALCULATED FROM THE ARBITRON 1973 COUNTY REPORTS BASED ON MAY AND NOVEMBER 1972 AND FEBRUARY/MARCH 1973 SURVEYS. THE CITY SHARE IS ACTUALLY THE HOME COUNTY SHARE OF THE CROSSOWNED STATION EXPRESSED AS A PERCENTAGE OF THE SUM OF THE COUNTY SHARES OF ALL STATIONS BASED IN THE CITY. THE COUNTY SHARE IS THE CROSSOWNED STATION'S SHARE EXPRESSED AS A PERCENTAGE OF THE SHARES OF ALL COUNTY BASED STATIONS. THE SMSA AND ADI SHARES ARE CALCULATED FROM THE ARBITRON DAY PART AUDIENCE SUMMARY FOR NOVEMBER 1973. THE DIFFERENCE IN SURVEY PERIODS MAY ACCOUNT FOR SOME SHIFTS BETWEEN CITY AND COUNTY SHARES ON THE ONE HAND AND SMSA AND ADI SHARES ON THE OTHER.

[c] NA IS ENTERED FOR THOSE COMMUNITIES WHICH WERE NOT PART OF AN SMSA AS OF NOVEMBER 1,1973.

[d] KHBC HAS BEEN GRANTED A CONSTRUCTION PERMIT BUT WAS NOT ON THE AIR DURING 1973.

[e] WHTV, THE ADI COMPETITOR OF WTOK, IS NOT LISTED IN THE DAY-PART AUDIENCE SUMMARY. ITS SHARE WAS ASSUMED TO BE 0.

[f] "CITY" INCLUDES MANHATTAN ONLY. "COUNTY" INCLUDES THE FIVE BOROUGHS OF NEW YORK.

[g] AUDIENCE SHARES FOR WHKY ARE NOT AVAILABLE.

Table 10: CONCENTRATION INDICES FOR NEWSPAPER-TELEVISION COMBINATIONS USING FOUR DIFFERENT MEDIA WEIGHTINGS

NUMBER	STATE	CITY	AREA OF DOMINANT INFLUENCE	ADI RANK	NAME OF NEWSPAPER	TV CALL SIGN	RADIO STATIONS #CO-OWNED	RADIO STATIONS # IN CITY	CONCENTRATION INDICES IN CITY OF LICENSE: DEJONCK-HEERE 40-40-20	LITWIN 44-39-17	ROPER INFORMATION 47-37-16	ROPER BELIEVABILITY 62-28-10
1	ALA	ANNISTON	ANNISTON	193	ANNISTON STAR	WHMA	2	4	90	92	92	95
2	ALA	BIRMINGHAM	BIRMINGHAM	47	BIRMINGHAM NEWS	WAPI	2	16	56	55	54	49
3	ARK	LITTLE ROCK	LITTLE ROCK	55	ARKANSAS DEMOCRAT	KTHV	0	10	26	31	31	31
4	CAL	FRESNO	FRESNO	73	FRESNO BEE	KMJ	2	16	57	57	56	51
5	CAL	SACRAMENTO	SACRAMENTO-STOCKTON	26	SACRAMENTO BEE	KOVR	2	15	38	37	36	33
6	CAL	SAN FRANCISCO	SAN FRANCISCO	6	SAN FRANCISCO CHRONICLE	KRON	1	26	51	51	50	44
7	COL	DENVER	DENVER	29	DENVER POST	KHBC	0	20	[a]	[a]	[a]	[a]
8	DC	WASHINGTON	WASHINGTON	9	WASHINGTON STAR	WMAL	2	16	33	33	33	31
9	DC	WASHINGTON	WASHINGTON	9	WASHINGTONPOST	WTOP	1	16	31	31	31	31
10	FLA	TAMPA	TAMPA-ST PETERSBURG	20	TAMPA TRIBUNE & TIMES	WFLA	2	11	58	58	57	52
11	GA	ALBANY	ALBANY	148	ALBANY HERALD	WALB	0	7	80	83	84	90
12	GA	ATLANTA	ATLANTA	17	ATLANTA JOURNAL & CONSTITUTION	WSB	2	16	58	57	56	52
13	IDA	IDAHO FALLS	IDAHO FALLS-POCATELLO	172	IDAHO FALLS POST REGISTER	KIFI	0	5	62	63	63	62
14	ILL	CHAMPAIGN	SPRINGFIELD-DECATUR-CHAMPAIGN	74	CHAMPAIGN COURIER & NEWS GAZETTE	WCIA	2	5	74	75	74	73
15	ILL	CHICAGO	CHICAGO	3	CHICAGO TRIBUNE & CHICAGO TODAY	WGN	1	28	26	25	25	21
16	ILL	CHICAGO	CHICAGO	3	CHICAGO DAILY NEWS & SUN TIMES	WFLD	0	28	21	21	20	16
17	ILL	QUINCY	QUINCY-HANNIBAL	124	QUINCY HERALD-WHIG	WGEM	2	4	90	92	92	95
18	ILL	ROCK ISLAND	DAVENPORT-ROCK ISLAND-MOLINE	67	ROCK ISLAND ARGUS	WHBF	2	2	100	100	100	100
19	IND	BLOOMINGTON	INDIANAPOLIS	18	BLOOMINGTON-BEDFORD COURIER TRIBUNE	WTTV	2	2	73[b]	74[b]	75[b]	81[b]
20	IND	ELKHART	SOUTH BEND-ELKHART	87	ELKHART TRUTH	WSJV	2	4	90	92	92	95
21	IND	SOUTH BEND	SOUTH BEND-ELKHART	87	SOUTH BEND TRIBUNE	WSBT	2	7	68	68	68	65

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22	IND	TERRE HAUTE	TERRE HAUTE	113	TERRE HAUTE STAR & TRIBUNE	WTHI	2	7	69	69	69	66
23	IOWA	CEDAR RAPIDS	CEDAR RAPIDS-WATERLOO	70	CEDAR RAPIDS GAZETTE	KCRG	1	6	58	58	57	53
24	IOWA	DES MOINES	DES MOINES	62	DES MOINES REGISTER & TRIBUNE	KRNT	2	11	60	60	59	55
25	IOWA	MASON CITY	ROCHESTER-MASON CITY-AUSTIN	130	MASON CITY GLOBE GAZETTE	KGLO	1	4	85	87	88	93
26	KAN	TOPEKA	TOPEKA	129	TOPEKA STATE JOURNAL & CAPITAL	WIBW	2	7	73	73	73	73
27	KY	LOUISVILLE	LOUISVILLE	36	LOUISVILLE COURIER JOURNAL & TIMES	WHAS	2	12	56	57	56	50
28	KY	PADUCAH	PADUCAH-HARRIS-BURG-CAPE GIRARDEAU	72	PADUCAH SUN DEMOCRAT	WPSD	0	5	67	68	68	70
29	LA	BATON ROUGE	BATON ROUGE	101	BATON ROUGE ADVOCATE & STATE TIMES	WBRZ	2	11	60	60	59	55
30	LA	SHREVEPORT	SHREVEPORT-TEXARKANA	58	SHREVEPORT JOURNAL	KSLA	2	11	66	66	66	64
31	ME	PORTLAND	PORTLAND-POLAND SPRING	75	PORTLAND PRESS HERALD EXPRESS & TELEGRAM	WGAN	2	7	66	66	66	62
32	MD	BALTIMORE	BALTIMORE	19	BALTIMORE NEWS AMERICAN	WBAL	2	18	28	30	29	30
33	MD	BALTIMORE	BALTIMORE	19	BALTIMORE SUN	WMAR	1	18	42	43	43	43
34	MICH	DETROIT	DETROIT	7	DETROIT NEWS	WWJ	2	21	41	41	41	39
35	MINN	DULUTH	DULUTH-SUPERIOR	110	DULUTH NEWS TRIBUNE & HERALD	WDSM	1	7	54	53	52	46
36	MINN	MINNEAPOLIS-ST PAUL	MINNEAPOLIS-ST PAUL	13	MINNEAPOLIS STAR & TRIBUNE; ST PAUL PIONEER PRESS & DISPATCH	WCCO	2	16	61	61	60	57
37	MISS	COLUMBUS	COLUMBUS	165	COLUMBUS COMMERCIAL DISPATCH	WCBI	1	4	85	87	88	93
38	MISS	JACKSON	JACKSON	80	JACKSON CLARION-LEDGER & NEWS	WJTV	2	12	58	59	58	54
39	MISS	MERIDIAN	MERIDIAN	162	MERIDIAN STAR	WTOK	1	7	83	85	86	90
40	MO	JOPLIN	JOPLIN-PITTSBURG	118	JOPLIN GLOBE	KOAM	0	5	53	53	52	48
41	MO	ST LOUIS	ST LOUIS	12	ST LOUIS POST DISPATCH	KSD	1	15	36	36	36	35
42	MO	ST LOUIS	ST LOUIS	12	ST LOUIS GLOBE DEMOCRAT	KTVI	0	15	27	28	28	28
43	MO	SPRINGFIELD	SPRINGFIELD	88	SPINGFIED LEADER,NEWS & PRESS	KYTV	1	9	57	57	56	52
44	NEB	HASTINGS	LINCOLN-HASTINGS KEARNY	81	HASTINGS TRIBUNE	KHAS	1	3	87	89	89	93
45	NEB	OMAHA	OMAHA	63	OMAHA WORLD HERALD	KETV	0	12	53	54	53	48
46	NEV	LAS VEGAS	LAS VEGAS	144	LAS VEGAS REVIEW-JOURNAL	KORK	2	10	43	43	43	42

47	NY	BUFFALO	BUFFALO	27	BUFFALO NEWS	WBEN	2	15	45	44	44	42
48	NY	NEW YORK CITY	NEW YORK CITY	1	NEW YORK DAILY NEWS	WPIX	1	29	17	16	16	12
49	NY	ROCHESTER	ROCHESTER	59	ROCHESTER TIMES-UNION, DEMOCRAT & CHRONICLE	WHEC	0	12	54	55	54	50
50	NY	SYRACUSE	SYRACUSE	68	SYRACUSE HERALD JOURNAL, HERALD AMERICAN &POST	WSYR	2	10	58	57	56	51
51	NY	WATERTOWN	WATERTOWN-CARTHAGE	163	WATERTOWN TIMES	WWNY	1	4	85	87	88	93
52	NC	GREENSBORO	GREENSBORO-HIGH POINT-WINSTON SALEM	52	GREENSBORO DAILY NEWS & RECORD	WFMY	0	7	80	83	84	90
53	NC	HICKORY	CHARLOTTE	34	HICKORY RECORD	WHKY	2	5	88	90	90	94
54	ND	FARGO	FARGO	95	FARGO FORUM	WDAY	2	4	71	71	70	66
55	OHIO	AKRON	CLEVELAND	8	AKRON BEACON JOURNAL	WAKR	2	5	88	90	90	94
56	OHIO	CINCINNATI	CINCINNATI	23	CINCINNATI POST & TIMES STAR	WCPO	0	13	35	36	36	37
57	OHIO	CLEVELAND	CLEVELAND	8	CLEVELAND PRESS & NEWS	WEWS	0	17	34	34	34	35
58	OHIO	COLUMBUS	COLUMBUS	32	COLUMBUS DISPATCH	WBNS	2	12	58	58	57	53
59	OHIO	DAYTON	DAYTON	41	DAYTON NEWS & JOURNAL HERALD	WHIO	2	7	64	63	63	58
60	OHIO	YOUNGSTOWN	YOUNGSTOWN	85	YOUNGSTOWN VINDICATOR	WFMJ	1	7	57	56	55	51
61	OKLA	OKLAHOMA CITY	OKLAHOMA CITY	39	OKLAHOMA CITY OKLAHOMAN & TIMES	WKY	1	15	48	48	47	46
62	OREG	PORTLAND	PORTLAND	25	PORTLAND OREGONIAN & OREGON JOURNAL	KOIN	2	19	54	55	54	48
63	PA	ERIE	ERIE	131	ERIE NEWS & TIMES	WSEE	0	6	53	53	52	48
64	PA	HARRISBURG	HARRISBURG-YORK-LANCASTER-LEBANON	45	HARRISBURG PATRIOT & NEWS	WTPA	1	7	63	63	62	59
65	PA	JOHNSTOWN	JOHNSTOWN-ALTOONA	71	JOHNSTOWN TRIBUNE-DEMOCRAT	WJAC	2	4	83	84	84	84
66	PA	LANCASTER	HARRISBURG-YORK-LANCASTER-LEBANON	45	LANCASTER INTELLIGENCER, JOURNAL, NEW ERA & NEWS	WGAL	2	5	79	80	79	80
67	SC	GREENVILLE	GREENVILLE-SPARTANBURG-ASHEVILLE	38	GREENVILLE NEWS PIEDMONT	WFBC	2	9	60	61	60	55
68	TENN	MEMPHIS	MEMPHIS	31	MEMPHIS COMMERCIAL APPEAL & PRESS SCIMITAR	WMC	2	15	56	55	54	49
69	TEX	DALLAS	DALLAS-FT WORTH	11	DALLAS TIMES-HERALD	KDFW	0	15	38	39	39	42
70	TEX	DALLAS	DALLAS-FT WORTH	11	DALLAS MORNING NEWS	WFAA	2	15	42	43	44	46
71	TEX	HOUSTON	HOUSTON	14	HOUSTON POST	KPRC	1	22	33	35	35	33

72	TEX	TEMPLE	TEMPLE-WACO	108	TEMPLE TELEGRAM	KCEN	1	2	90	92	92	95
73	TEX	TEXARKANA	SHREVEPORT-TEXARKANA	58	TEXARKANA GAZETTE & NEWS	KTAL	2	5	88	90	90	94
74	UTAH	OGDEN	SALT LAKE CITY	50	OGDEN STANDARD	KUTV	0	5	49	49	48	42
75	UTAH	SALT LAKE CITY	SALT LAKE CITY	50	SALT LAKE CITY DESERET NEWS	KSL	2	17	55	55	54	49
76	VA	NORFOLK-PORTSMOUTH	NORFOLK-HAMPTON-PORTSMOUTH-NEWPORT NEWS	46	NORFOLK VIRGINIAN PILOT & LEDGER STAR	WTAR	2	9	84	87	88	92
77	WASH	SPOKANE	SPOKANE	77	SPOKANE SPOKESMAN, REVIEW & CHRONICLE	KHQ	2	16	57	57	56	51
78	WVA	BLUEFIELD	BLUEFIELD-OAK HILL-BECKLEY	132	BLUEFIELD TELEGRAPH & SUNSET NEWS OBSERVER	WHIS	2	3	93	94	95	97
79	WISC	MILWAUKEE	MILWAUKEE	24	MILWAUKEE JOURNAL & SENTINEL	WTMJ	2	16	56	55	54	49
80	WISC	WAUSAU	WAUSAU-RHINELANDER	135	WAUSAU RECORD HERALD	WSAU	2	5	72	72	71	69

NOTES:

THE METHOD OF COMPUTING THESE INDICES IS DESCRIBED IN THE TEXT. WEIGHTINGS FOR NEWSPAPERS, TV STATIONS AND RADIO STATIONS ARE LISTED UNDER EACH APPROACH.

* KHBC HAS BEEN GRANTED A CONSTRUCTION PERMIT BUT WAS NOT ON THE AIR DURING 1973.

♦ CALCULATIONS BASED ON UNAUDITED CIRCULATION FIGURES FOR THE BLOOMINGTON-REDFORD COURIER TRIBUNE.

[Letter to Chairman Wiley and Commissioner Hooks from Edward Hayes on behalf of the National Black Media Coalition (September 9, 1974)]

Dear Chairman Wiley and Commissioner Hooks:

During statements made by members of the National Black Media Coalition in the public hearing on July 24, 1974, concerning F.C.C. Docket 18110, you requested NBMC to make available to you its views on how the F.C.C., pursuant to an order requiring divestiture on newspaper and broadcast property which is jointly-held in one market, could limit swaps between owners of such broadcast property. This letter presents NBMC's views on this important matter.

Once the Commission rules that cross-ownership of a newspaper and a broadcast property within a market is indeed contrary to the general public interest, the Commission must limit the ability of cross-owners to swap broadcast properties in each other's cities. This limitation is necessary in order to facilitate the acquisition of broadcast properties by minority persons, who now own less than .5% of the country's broadcast facilities.[1]

Minority entrepreneurs must have an opportunity to gain ownership of broadcast property in desirable mar-

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[1]The U.S. Commission on Civil Rights has reported that of approximately 7,500 radio stations throughout the country, only 10 are owned by minorities and that of the more than 1,000 television stations, none is owned by minorities. *Federal Civil Rights Enforcement Efforts*, A Report of the U.S. Commission on Civil Rights, p. 280 (1971). These figures are now only slightly outdated. NBMC believes that in 1974 there are still no more than 33 minority owned radio stations. As for television stations, there is one minority-owned VHF facility in St. Croix, Virgin Islands, and a construction permit has recently been approved for a UHF facility in Detroit.

kets.[1] Indeed, the Commission itself has already recognized that the number of minority broadcast licensees is dismally low.[2] Divestiture would provide the Commission with an excellent occasion to take steps aimed toward assuring minority persons of opportunities to become licensees in major markets around the country. Such action would be in furtherance of the basic goal of the Communications Act of 1934: diversity.

In order to foster greater diversity in the media and to facilitate minority ownership, NBMC suggests that the Commission adopt procedures pursuant to the following:

I. In a transfer of a broadcast property as a result of Commission required divestiture, the transferor must entertain bids for its property with preference being given to competing potential transferees in the following order:

a. local[3] entrepreneurs whose principals represent or embody substantial, if not controlling, minority interests,

[1] See NBMC's Petition for Rulemaking, RM-2278, filed November 12, 1973. Section IV of the Petition, entitled "The Commission Should Facilitate Increased Minority Ownership of Broadcast Stations," recommended actions the Commission could take, other than divestiture, to make ownership of broadcast media more reflective of our heterogenous society.

[2] See, for example, *Howard University*, 19 R.R. 2d 234, 236 (1970), wherein the Commission stated that there exists a "chronic national shortage of Black broadcasters."

[3] In examining transfer applications the Commission must narrowly define the term "local" so that the relevant market does not become regional rather than local. There is currently confusion about how this is to be accomplished. In *Frontier Broadcasting Co.*, 21 F.C.C. 2d 570 (1970), the Commission rejected an argument that the total Grade B contour was the relevant area for an examination of concentration of media control in the Cheyenne, Wyoming, market. Instead, the Commission determined that the

[footnote continued]

b. non-local entrepreneurs whose principals represent or embody substantial, if not controlling, minority interests,

c. other local entrepreneurs,

d. other non-local entrepreneurs;[1]

II. Subsequent to a Commission divestiture order the licensee shall:

a. give notice of the required divestiture to its service area for six months beginning with the time at which the order was given, and

b. among other procedures which the licensee deems appropriate, give notice as required in a. through an-

market was the area in and around Cheyenne. However, the Commission appeared to reverse its judgment in *Chronicle Broadcasting Co.*, 40 F.C.C. 2d 775 (1973), *appeal pending sub nom. Kihn* v. *F.C.C.*, D.C. Cir. Case No. 73-1627. The Commission's reliance in *Chronicle* on a Grade B contour for determining the extent of concentration of control is one of the issues which has been appealed. We note, in addition, that the United States Department of Justice has sought to intervene in the *Kihn* case to contest the Commission's market definition therein.

[1] NBMC recognizes that the weight presently given local ownership is not as great as that which was once expressed by the Commission in its *Policy Statement on Comparative Broadcast Hearings*, 1 F.C.C. 2d 393, 396, 5 RR 2d 1901, 1910-11 (1965): "Local residence complements the statutory scheme and Commission allocation policy . . . and local ownership also generally accords with the goal of diversifying control of broadcast stations." However, local ownership is nonetheless current Commission policy and was recently supported by the U.S. Court of Appeals in *TV9, Inc.*, 495 F.2d 929 (D.C. Cir. 1973; petition for cert. pending on other issues). Also, it should be pointed out that, while swaps between local cross-owners would increase the number of absentee licensees, such swapping would be preferable—particularly when an absentee owner has minority participation—to allowing the inherent conflicts of interest of co-ownership of a newspaper and a television station in the same town.

nouncements broadcast daily over the station to be divested and through weekly newspaper advertisements. At least fifty percent of the broadcast announcements must be aired during the time periods of highest billing;

III. In the event that a complaint is filed with the Commission to the effect that a transferor did not entertain bids as prescribed, or provide the proper notice within its service area, the Commission shall:

a. notify the transferor of the charge,

b. require an affirmative showing by the transferor that it has indeed proceeded as prescribed in Sections I. and II., and

c. in the event of failure to proceed in the manner prescribed, dismiss any transfer application filed by the transferor.[1]

It is significant to note that the procedures outlined above[2] would limit swaps, facilitate minority ownership, and yet not violate the prohibition of Section 310(b) of the Communications Act, which prevents the Commission from comparing license transfer applicants. As amended in 1952, the Section did not contemplate divestiture transfers pursuant to a Commission order. It is thus not conclusive of the Commission's authority to limit such transfers.

[1]The Commission should also consider requiring, for transfers pursuant to a divestiture order, a year's moratorium on transfers other than to minority persons.

[2]These procedures should pertain to all transfer situations. However, NBMC realizes that this issue might be more appropriately discussed in another rulemaking proceeding.

Those transfers made pursuant to a divestiture order would be very different from normal transfers made for the private benefit of the parties involved.[1] Safeguards taken by the Commission to assure the greatest possible public benefits can, and should, be established in this rulemaking proceeding.[2]

At the end of the transfer process which NBMC suggests, the Commission would have only one transfer application before it. The Commission itself would therefore not be called upon to make *comparisons among* transfer applicants, which is the *only* procedure barred by 310(b) of the Act. Challenges to a transfer application could be submitted if a party could support an allegation that the transfer procedures pursuant to a divestiture order had not been followed. But this would not go to the comparative merits of another potential applicant. They would be addressed solely to the technical question of whether certain procedures had been followed.

As has been recognized by various informed bodies, including the F.C.C., action to spur increased minority broadcast ownership has long been warranted. The United States Commission on Civil Rights, in comment-

[1]Transfers made pursuant to a divestiture order would be "forced" divestitures which would be eligible for special treatment, such as involuntary conversion benefits under the tax laws, 26 U.S.C. 1071; see also, *Tax Certificates*, 19 R.R. 2d 1831 (1970). They can, therefore, be given *more* stringent requirements by the F.C.C.

[2]In its *Policy Statement on Comparative Hearings on Renewals Applicants*, 22 F.C.C. 2d 424, 428 (1970), the Commission stated: "... the overall structure of the industry, so far as multiple ownership and diversification are concerned, should be the subject of general rulemaking proceedings rather than ad hoc decisions in renewal hearings."

ing upon the "almost total absence of minorities from ownership of radio and television stations"[1] has stated:

> The FCC . . . should amend [its] procedures concerning issuances (sic) of licenses, which currently tend to protect the economic interests of existing licensees, to facilitate minority group entrance as entrepreneurs.[2]

The Court of Appeals, in discussing minority ownership of broadcast facilities, has told the FCC:

> As new interest groups and hitherto silent minorities emerge in our society they should be given more stake and chance to broadcast on our radio and television frequencies.[3]

The Commission has also touched upon the same general concern in its opinion in *Lamar Life Broadcasting Co.*, wherein it stated that it considered "active and increased Negro participation in the broadcast communications field" to be of "crucial significance."[4]

As indicated in its oral presentation to the Commission on July 24, NBMC supports the implementation of rules requiring divestiture. It is only through such rules that the Commission can secure the public needs for multiplicity of views on the airwaves and for diversity of ownership. The Commission must take affirmative action aimed at making certain that broadcast ownership, as well

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[1] *Federal Civil Rights Efforts*, A Report of the United States Commission on Civil Rights, p. 280 (1971).

[2] *Ibid.*, fn. 3 at 361.

[3] *Citizens Communications Center* v. *FCC*, 145 U.S. App. D.C. 32, 44, 447 F.2d 1201, 1212, fn. 36 (1971).

[4] *Lamar Life Broadcasting Co.*, 14 F.C.C. 2d 431, 436, fn. 13 (1968).

as programming, is reflective of the pluralistic nature of our society. As Commissioner Hooks declared in his concurring statement in *Mid-Florida Television Corp.*:

> The public 'interest' benefit in licensing minorities is manifest; the situation has reached the point of public 'necessity'.

[Barnett, S., "Cross-Ownership of Mass Media in the Same City: A Report to the John and Mary Markle Foundation" (September 23, 1974), pp. 1-2; 10-19; 31-64]

PREFACE

This report, prepared under a grant from the John and Mary R. Markle Foundation, deals with the "cross-ownership" of mass media outlets in the same city, a controversial issue of public policy currently pressing upon the Federal Communications Commission, the Congress, the Justice Department, and possibly the courts. Somewhat unusually, the report takes the form of a critique and supplement to two other reports, drafts prepared by the Rand Corporation that were circulated for comments and criticisms on August 7, 1974. Rand has been working since April 1973, under a grant from the National Science Foundation, on "a study to assess the research literature and other writings dealing with the ownership and control of radio, television, cable communications, and newspapers," in order "to determine what factual evidence there is on the effects of media ownership and its relevance to present government policies. . . ." The prospective reports circulated by Rand in August are fruits of this study. One of them (which I shall call the "current knowledge" report) is *Concentration of Mass Media Ownership: Assessing the State of Current Knowledge* (R-1584-NSF), by Walter S. Baer, Henry Geller, Joseph A. Grundfest, and Karen B. Possner, dated September 1974 (183 double-spaced pages in its draft form), which

was prepared under the NSF grant. The other (which I shall call the "options" report) is *Newspaper-Television Station Crossownership: Options for Federal Action*, by Walter S. Baer, Henry Geller, and Joseph A. Grundfest, dated August 1974 (51 double-spaced pages), which was "written with the support of the John and Mary R. Markle Foundation under a grant to Rand's Communications Policy Program" and "draws in large part on the knowledge and materials accumulated under the assessment supported by the National Science Foundation."

I was among those to whom Rand circulated copies of the draft reports. I had had no previous connection with Rand's work on these projects, and have prepared this report only since receiving and examining the Rand drafts. Besides being submitted to the Markle Foundation, this report is being made available to Rand (to whom its substance was communicated by telephone in August), to policy-makers at the FCC, the Congress, and the Justice Department, to the National Science Foundation, and to others who are involved or interested in the subject. I am grateful to the Markle Foundation for funding the report's preparation, and I hope it may contribute to the understanding of this issue and the formulation of policy on it.

The report consists of two parts, a relatively brief "critique" of the Rand reports and a more lengthy "supplement" to them. Part I, the critique, notes a number of respects in which I find the Rand drafts wrong, misleading, or deficient. (Most of these points have already been communicated to Rand and therefore may not apply to the final versions of the Rand reports.) Part II, the supplement (and in part a critique as well), is addressed to what I consider the main inadequacy of the

Rand reports, and a serious one. This is Rand's conclusion, after an assertedly thorough and systematic search of the published sources and other materials, that there is a "lack of concrete evidence of harm from cross-ownership," that "the evidence on the effects of cross-media ownership supports neither allegations of substantial harm nor those of substantial public benefits from newspaper-television combinations." I believe there is a considerable amount of concrete evidence of harm from cross-ownership—consisting mainly of individual examples found in a variety of published, reliable sources—which in its aggregate demonstrates not only substantial and widespread harm but a clear tendency to produce it. Rand has ignored all this evidence, thanks to a methodological approach which (for reasons I discuss) seems cramped and self-defeating. Although I have made no systematic search to collect the evidence, I list and describe in Part II a number of examples that have come to my attention, dealing first with "harmful effects of media ownership in general" (for reasons I explain), and then specifically with "harmful effects of local-media cross-ownership." I note that a comprehensive search could doubtless collect many more examples, and I discuss the inferences that can be drawn in any event as to the relationship between the amount of such evidence that comes to light and the amount of harmful effects that exists. I note further that the evidence presented is relevant not only to the existence of harmful effects from cross-ownership, but also to the policy advantages and disadvantages of some of the "options for federal action" that Rand attempts to evaluate.

* * * * *

II.
SUPPLEMENT

A. A Note on "Evidence" and Methodology

The most serious deficiency of the prospective Rand reports is their disregard for extensive published evidence concerning harmful effects of local-media cross-ownership. This is the more surprising because a thorough assessment of published material on this question was, professedly, the precise purpose of the NSF-funded "current knowledge" project. Rand undertook "a study to assess the research literature and other writings dealing with the ownership and control of radio, television, cable communications, and newspapers." "Current knowledge" report, at iii. ". . . Rand considered it important to sift the literature systematically, and as dispassionately as possible, with two goals in mind: first, to determine what factual evidence there is on the effects of media ownership and its relevance to present government policies . . . ." *Ibid.* "This study drew on a large number of published books and articles, graduate theses and dissertations, Congressional reports and testimony, inquiries of the Federal Communications Commission, and other published and unpublished sources. . . . Our intent has been to review and critically assess what we know about media ownership and control as an aid to government officials, people involved in the mass media, and concerned citizens." *Id.* at iv. "Chapter II [of the "current knowledge" report] describes the evidence concerning the influence of media ownership on the performance of media outlets as economic units and information sources." *Ibid.* "This assessment of more than 500 books, articles, dissertations, FCC filings, and testimony before Congress addressed itself to the principal question: In what ways does media ownership influence media performance?" *Id.* at 82.

After all that searching, Rand comes back empty-handed. With one or two exceptions, Rand reports, there is no published evidence of harmful effects from local-media cross-ownership. The two studies of Zanesville, Ohio, found harmful effects from the media monopoly there, as compared with comparable cities with media competition, "but this result cannot simply be extrapolated to all other media monopolies; the policy question is whether there is a general tendency for media monopolists to provide poorer service. Additional evidence from other cities is needed to answer that question." "Options" report, at 10. There is a "lack of concrete evidence of harm from crossownership." *Id.* at 11. "The evidence on the effects of cross-media ownership supports neither allegations of substantial harm nor those of substantial public benefits from newspaper-television combinations." *Id.* at 36.

> Briefly stated, the results of assessing the current knowledge about concentration of media ownership can be expressed in the well-known Scotch verdict: "not proved." As described throughout this section, the evidence relating media ownership to economic or content performance is generally weak and unconvincing. Most studies simply show no significant differences among media ownership classes. Differences repeated in certain studies have not been reproduced in other situations. And many of the prior studies seem flawed by a lack of data or by methodological inadequacies such as a failure to control for other important variables. ["Current knowledge" report, at 82-83.]

Rand suggests that the paucity of evidence is due to the difficulty of the "research problem":

> As described above, the research relating media ownership to economic and content performance is neither extensive nor deep. The results to date provide meager evidence on the benefits and harm from media ownership concentration. In large part, this is because measuring the effects of ownership is a difficult research problem. To yield valid results, studies must control for many other variables that are likely to have far stronger effects than ownership—market size, circulation and audience shares, competitors in the market, and so forth. Measuring the impact of media ownership may be like measuring the strength of a ripple amidst much larger waves. [*Id.* at 149]

Again pondering the reason for the lack of evidence, Rand writes:

> . . . There are at least three alternative explanations for the generally inconclusive results of previous studies:
>
> 1. there are in fact no significant differences in the economic and content performance of group owned or cross owned media outlets compared with independently owned outlets;
>
> 2. the effects of media ownership are qualitative and too subtle to be found with quantitative research techniques;
>
> 3. the effects are there, but past studies have looked in the wrong places or have not used the best available analytic tools. [*Id.* at 83.]

There is a fourth explanation: Rand has not looked in the right places. Rand's basic problem lies in the assumption that harmful effects from media cross-ownership can only be demonstrated through "quantitative research techniques"—techniques that "control for other important variables" and thus prove, through the indirect means of eliminating the other possibilities, that a measured difference in media performance in two comparable

situations must be due to the differences in ownership. Rand is surely right that this is "a difficult research problem." People, cities, geography, and numerous other aspects of life being what they are, there may well be no pair of communities in the country, and no pair of newspapers or broadcast stations, as between which a methodological critic cannot find "variables" that are beyond laboratory-style "control." But in straining at this kind of inferential proof of harm from cross-ownership, Rand overlooks the possibility of direct proof. If medical science knew how cancer was caused and knew that cigarette smoke caused it in a specific physiological way, it would not have to try to establish the causal relationship by comparing cancer rates in groups of smokers and nonsmokers carefully chosen to control for all other possible variables. To use Rand's analogy, "measuring the impact of media ownership may be like measuring the strength of a ripple amidst much larger waves," *if* the only available research method is to compare the water movements in two ponds in "quantitative" terms; but if one observes a rock thrown into a pond and a ripple starting where it fell, one has done "research" and one has "evidence" that the rock caused the ripple. If such an effect cannot be "found with quantitative research techniques" because of the larger waves due to other causes, that does not necessarily mean the effect is "subtle"; thanks to direct evidence, it may be palpable.

So here, there may be direct evidence that local-media cross-ownership causes harmful effects on the economic or content performance of media, in the form of observations of its happening in specific cases. It may be observed, for example, that the owner of a newspaper-broadcast combination orders one outlet to suppress, insert, or distort news stories involving the other outlet,

or orders both outlets to give the same kid-gloves treatment to stories in which he is interested. Or it may be observed—a less direct form of evidence, but still susceptible of specific and persuasive documentation—that this is in fact the way particular stories involving the owner have been handled by the cross-owned outlets. It may be observed that cross-owned newspapers in at least some cases favor their own broadcast stations over competing stations in their radio and TV listings; or that a newspaper-broadcast combine competing with another newspaper offers cut-rate broadcast time to merchants who advertise in its newspaper, or that such a combination refuses to sell broadcast time to someone who won't advertise in the newspaper; or that extensive professional interviews in a community with highly concentrated media control, or articles by respected journalists based on interviews in such communities, report specific harmful effects resulting from the concentrated control; or that cross-owned newspapers and radio stations in small towns with few if any other local media send a single reporter to town meetings, share news tips, and otherwise deny the local public the journalistic diversity that separate owners would provide; and so forth.

Indeed, because of the problems noted by Rand with "quantitative research techniques," the existence—or nonexistence—of such observations may be the best kind of evidence one can expect on the question of harmful effects from local-media cross-ownership. (Rand says in the preface to the "current knowledge" report, at iii, that one of the "crucial issues" is, "Do media monopolies present one-sided verisons of the news?" It is hard to see how one can thoroughly investigate that issue while ignoring, as Rand does, the existence of published accounts, respectable and documented, reporting specific

instances in which media monopolies have done precisely that.)

True, one has to consider the number of such occurrences, which could be merely aberrational. But this is equally true of Rand's "quantitative" approach. Even when a satisfactorily matched pair of cities is found and the other variables satisfactorily controlled, as in the Zanesville studies (or at least one of them), Rand discounts the evidence because it only relates to one city: "These questions cannot be answered from the Zanesville results alone; Zanesville may illustrate a specific, isolated problem. Additional survey research would be needed to extend these results to other media monopoly communities." "Current knowldege" report, at 148; see also "options" report, at 10.

With either kind of evidence, evaluating its quantity and quality is a process—and ultimately a policy judgment—distinct from the process of collecting the evidence in the first place. Rand set for itself, and now claims to have performed, the task of collecting the evidence that exists—"to sift the literature systematically . . . to determine what factual evidence there is on the effects of media ownership . . . ." ("current knowledge," at iii). And yet Rand has ignored, save for the Zanesville studies, the extensive published evidence that does exist of the kind just sketched, evidence showing specific harmful effects plainly caused by local-media cross-ownership in particular cases. It is hard to see why the facts of such cases are not part of ". . . what we know about media ownership and control . . ." (*id*. at iv), or of ". . . . the evidence concerning the influence of media ownership on the performance of media outlets as economic units and information sources" (*ibid*.). It is hard to see why they do not constitute ". . . concrete evidence of

harm from cross ownership" ("options report, at 11), or do not shed light on ". . . the principal question: In what ways does media ownership influence media performance?" ("current knowledge" report, at 82).

Rand's performance of the task of systematically searching out and collecting such evidence would have been particularly useful, because no one else has done it and it is not easy. No consultant has been commissioned by the NAB to collect this kind of material for filing with the FCC. The material is not indexed under any common heading in any library or catalog. Its very nature, moreover, generally rules it out of the kind of conspicuous publications that would bring it to ready notice. The effects of local-media cross-ownership are, of course, generally "local" in their impact and substantive interest; hence they customarily go unnoticed by national publications and unreported even when they are noticed. At the local level, meanwhile, the blockage is even worse; harmful effects of newspaper-broadcast cross-ownership are obviously unlikely to be reported by the newspaper involved, and in almost all cases this will be the only daily newspaper in town (newspaper monopoly now prevails in some 97 percent of the cities that have daily newspapers). One has to find the evidence, therefore, in other sorts of publications. Journalism reviews, both national and local, are a prime source, and one would have thought an obvious one, though Rand gives no indication of recognizing their existence. The national trade journals of the broadcasting and newspaper industries are another. Other sources at the local level include "city" magazines, weekly and "alternative" newspapers, and other publications which, though unorthodox as research sources, tend to be the only local publications that are not controlled by the newspaper-broadcast combine and are thus in a position

to report on its conduct and effects. But there are also many more orthodox and obvious sources in which the evidence appears, including many of the sort that Rand claims to have sea:ched. These include books and articles, Congressional hearings, not just "FCC filings" but also decided cases of the FCC, and decisions of the courts as well.

I have not attempted any systematic search of the kind Rand said it was undertaking. I was not addressing myself to this problem before I received Rand's prospective reports. Still, working only from material that has come to my attention, I can offer a number of examples of published evidence of harmful effects from local-media cross-ownership. I shall limit the list to published materials, plus FCC filings, and shall limit it further to persons, publications, or circumstances meeting a reasonable standard of reliability or credibility. I am excluding, for example, quite a few "mere" allegations, even though made in FCC filings, that are not accompanied, to my knowledge, by persuasive documentation or some other warrant of reliability. The examples I am including admittedly vary in their force as evidence. Some constitute actual legal determinations by the FCC or the courts; others books, articles, or Congressional testimony by respectable scholars or journalists (myself included, with apologies), almost always supported by specific documentation; others testimony by respectable witnesses with documentation or first-hand knowledge of the facts they relate. The examples vary also in their scope, impact, and policy importance. But in their aggregate they show harmful effects from local-media cross-ownership which, it seems to me, are substantial, widespread, and can hardly be dismissed as aberrational. And this evidence, I would repeat, is only what has come to my

limited attention; a systematic search of the likely materials would certainly disclose many more examples.

Furthermore, in evaluating the policy significance of whatever volume of evidence is available, one must take into account the compelling inference that it represents only the tip of the iceberg. There are obvious reasons why the abuses or harmful effects of local-media cross-ownership that come to light in published form, in FCC filings, in any form at all, are probably only a small portion of the ones that exist. Some of these reasons were pointed out by former FCC Commissioner Nicholas Johnson in the *"Chet Huntley"* case. *National Broadcasting Co.*, 14 F.C.C.2d 713, 720-723 (1968) (dissenting opinion). In the first place, with respect to "half" of the output of a newspaper-broadcast combination—that of the broadcast station or stations—"there are no published and publicly available written records." Any analysis of the news content of a local broadcast station—to see, for example, how it has handled stories involving the cross-owned newspaper or the interests of the common owner—is almost always precluded by the unavailability of a transcript or written record; such studies are perforce limited to the content of the newspaper. Then, as Commissioner Johnson continued, "What appears to be self-interest is often camouflaged by 'news judgment'." 14 F.C.C.2d at 721. When a station's management orders coverage, noncoverage, or a particular kind of coverage of a particular story, even a story plainly involving its own interests, whether this constitutes an "abuse" or a legitimate exercise of news judgment depends, at least so far as the FCC is concerned, on the subjective motive of the person giving the order (see the discussion below of the *Chronicle Broadcasting* case). Since motives, and especially improper ones, often go unexpressed in documentary

or even spoken evidence, one can only assume that such harmful effects do occur without taking the form of reportable evidence.

Third, and most important here, is the point made by Commissioner Johnson as follows (with specific reference to conglomerate ownership, but applicable as well to cross-media ownership):

> Finally, most of the examples of abuse do not take a form that can be seen in the light of day. Outside phone calls encouraging stories, or urging their suppression, are not recorded, or reported, and may not even be acknowledged to one's fellow employees. Memoranda encouraging corporate obedience are not made public—with rare, and revealing, exception. And the most effective forms of communication to employees are informal: the off-hand remark, who gets the promotions, which items get used and which are killed. . . . [*Id.* at 722.]

(Scholarly support for this point, if any is needed, appears in studies I shall cite; *e.g.*, Warren Breed, "Social Control in the News Room: A Functional Analysis," *Social Forces*, May 1955, reprinted in Wilbur Schramm, MASS COMMUNICATIONS (2d ed. 1960), at 178-194.) Further, even when the abuse does take the form of a memorandum, conversation, or other communication that can be reported to the outside world, there is strong reason to assume that in the great majority of cases it is not, the reason of course being the loyalty of employees, their hopes of advancement and fears of reprisal. These considerations seem self-evident, and they surely support an inference that many if not most of the abuses and harmful effects of concentrated media control do not come to light in published or legal form. Hence those that do come out should be considered, for policy-making

purposes, as representative of a much larger totality that exists.

In the remainder of this report I list and describe some examples that have come out. Before focusing specifically on local-media cross-ownership, I deal with harmful effects of media ownership more generally. The relevance of this is explained in the introduction to the next section.

B. Harmful Effects of Media Ownership in General: Evidence of the Use of News Media to Serve the Private Interests or Views of Their Owners

Before focusing on the particular case of local-media cross-ownership, it is relevant to consider what evidence there is more generally of harmful effects of media ownership on media performance, as by the shaping of news content to serve or reflect the private interests or views of the media owners. Although Rand found no such evidence, and apparently looked for none, one would have thought it to be included in the scope of a search addressed to "... the principal question: In what ways does media ownership influence media performance?" ("Current knowledge" report, at 82.) Evidence that media owners use their outlets in self-interested ways is relevant to the issue of local-media cross-ownership because the harmful effects of such use, on either the economic or the content performance of the outlets, or on both, can only be enlarged when more than one outlet in the same community is under the same ownership.

There are three ways in which such enlargement comes about. First, ownership of a second media outlet expands the local interests of the media owner, adding to those interests a valuable property which is also an important and newsworthy local institution. If the owner of the

local newspaper sees to it that the paper suppresses or slants news stories involving the paper itself—*e.g.*, a merger, strike, libel suit, staff uprising, interest in downtown redevelopment—or involving his own or his associates' additional ownership of a local TV station, for example, will subject that important and newsworthy local institution to the same news manipulation (so that stories of FCC proceedings involving the station, for example, will be handled with kid gloves, if at all, in the newspaper). Second, the scope of the media in which the treatment takes place is also expanded. Stories affecting the newspaper or the other interests of the media owner are now subject to cozy handling not just by one local outlet, the paper, but by two (or three or four or five, when AM and FM stations and cable systems are brought under the same ownership). Third, the chance for "corrective coverage" by other local media is correspondingly reduced. Under separate ownership, the TV station could be expected to report the story that the paper is suppressing, or even to expose and attack the paper's handling of it, or otherwise to serve as watchdog on the paper and its owner with respect to the variety of local issues in which they may be interested or involved. Under common ownership with the paper, the station is most unlikely to perform this important function. Similarly, if there is evidence of economic abuse of media ownership, as by predatory or monopolistic tactics against competitors, the impact of such harm is increased by local-media cross-ownership.

So if there is substantial evidence that one way "media ownership influence[s] media performance" is by shaping that performance to serve the interests of the owner, it would seem to follow that local-media cross-ownership increases the resulting harmful effects on the local public.

At the very least, such evidence should place the "burden of proof" on the defenders of cross-ownership to adduce some reason and some evidence as to why the self-interested conduct of media owners generally—in which they are no different from most humans—does not apply to a valuable property of the owner that happens to consist of another media outlet in the same community.

And there is, of course, substantial evidence of the use of local news media to serve and reflect the private interests or points of view of their owners (apart from the editorial pages). Indeed, one hardly knows where to start. This is probably *the* dominant content of most journalism reviews, for example. To take just one current report, see "Behind the Damask Curtain," by Karl E. Meyer, in the July 1974 issue of [MORE], the well-known journalism review published in New York (at 11-14). The article describes the inadequate coverage of art museums by newspapers around the country and lists 18 major cities where the owner or editor of a daily newspaper is a trustee of the local museum. It is peculiarly pertinent here because of a follow-up, see [MORE] for August 1974, at 4, congratulating television station KAKE in Wichita, Kansas, "for proving that the air can still be free when the monopoly local newspapers attempt the crudest forms of news manipulation." This story reports that the editor of the monopoly newspapers in Wichita met privately with the president of the city's Fourth National Bank to discuss the proposed new site for the Wichita Art Museum. The newspapers thereupon ran a series of editorials (seven in five days) arguing against the proposed site and for a new one which "is close to the Fourth National Bank's glossy new $20 million building," though "this coincidence was not mentioned . . .," while other advantages of the originally

selected site were also glossed over in the papers. [MORE] reports that KAKE, however, "took on" the papers in "a dozen revealing broadcasts" which brought out the points the papers omitted, and in which "for the first time, Wichita's citizens learned of the private meeting between the editor and the bank officials, and of the Fourth National's obvious interest in changing the site." It concludes: "A full reading of the broadcast transcripts, and of the tendentious newspaper stories, suggests eloquently that in monopoly towns broadcasters have a special obligation to put on the air the news deemed unfit to print." That is not likely to happen, of course, where the newspaper owns the broadcast station. Surely the chance for such "corrective coverage" is reduced, if not eliminated, by newspaper-broadcast cross-ownership.

The self-interested influence of ownership on the performance of news media is so endemic and well known, the evidence of it so ubiquitous, that one feels a little foolish in citing examples ("so what else is new?"). Nonetheless, in view of Rand's apparent position that there is no such evidence, and the possibly similar position of the FCC, I shall cite some examples in this section. Without attempting to do more than scratch the surface of the available evidence, without using any but current issues of journalism reviews, I offer the following sampling.

* * * * *

C. Evidence of Harmful Effects of Local-Media Cross-Ownership

Given the tendency illustrated by the foregoing examples, one would expect harmful effects, of specific kinds, to flow from the common ownership of more than one media outlet in the same city. Sure enough, there is a good deal of published, reliable evidence that this hap-

pens. Again, the examples I shall cite are not the fruit of any comprehensive search, but simply ones that have come to my attention. I would repeat also that there are strong reasons for inferring that harmful effects of local-media cross-ownership often occur without coming to light in any published form, and hence that what we have here is only a fraction of what exists. I would further note that many of these examples shed light not only on the existence of such harmful effects, but also on the policy advantages or disadvantages of one of the "options for federal action" that Rand reviews. This is the option—the necessarily prevailing option if a divestiture rule is not adopted—of leaving the FCC to deal with "abuses" of cross-ownership on a case-by-case basis, and thus relying on a government agency to investigate and adjudicate (with valuable licenses hanging in the balance) the kinds of journalistic facts reported in these examples.

1) *Litwin's results on Spokane.* Rand discounts the results of the two studies involving Zanesville, Ohio, both of which found harmful effects from the media monopoly there, on the basis that "this result cannot simply be extrapolated to all other media monopolies; the policy question is whether there is a general tendency for media monopolists to provide poorer service. Additional evidence from other cities is needed to answer that question." "Options" report, at 10. Again, "... Zanesville may illustrate a specific, isolated problem. Additional survey research would be needed to extend these results to other media monopoly communities...." "Current knowledge" report, at 148. Additional evidence and survey research on another city is that concerning Spokane, Washington, which is found in the Litwin-Wroth study commissioned by the National Association of Broadcasters and filed by it with the FCC in the cross-owner-

ship proceeding, Docket No. 18110. George H. Litwin and William H. Wroth, *The Effects of Common Ownership on Media Content and Influence: A Research Evaluation of Media Ownership and the Public Interest*, July 1969. Rand discusses this study at some length (*e.g.*, "current knowledge" report, at 134-136), and notes that it has been deservedly criticized (by me and the FCC) for, among other things, tending "to discount the very negative attitude toward the cross-owned media found in one of the three concentrated markets . . ." *Id.* at 135. While Rand says nothing more about it, I find it hard to see why that "very negative attitude" found by Litwin and Wroth through their professionally-conducted in-depth interviews of 13 "media personnel" and some 10 "business and community leaders" in Spokane is not "evidence," produced in fact by "survey research," on the performance of the media cross-ownership in that city. (See the Litwin Study at 4-4—4-5 and Appendices B, C, and D on the number of persons interviewed, their selection, and the questions asked.) Litwin wrote as an Assistant Professor of Organizational Behavior at the Harvard Business School, with a Ph.D. in Social Psychology from Harvard; Wroth was research director of Intermedia Systems Corporation, with academic credentials and extensive experience in survey research (see *id.*, Appendix E). They conducted their interviews in six cities, selected to comprise two large ones, two medium-sized, and two small (about 300,000 population), with each pair matching a city with a relatively high concentration of common media ownership against an otherwise similar city with a relatively low concentration. (See *id.* at 4-1—4-3 and Appendix A for data on the selected cities.) The small city with the high concentration was Spokane (which the study calls "Carterville"). Litwin and Wroth were working under commission from the NAB, and their discussion of their results is, as Rand indicates, slanted to discount findings unfavorable to cross-ownership. The selection of their interview subjects also had a bias that quite possibly favored cross-ownership. See "current knowledge" report, at 135; Barnett, 22 *Stanford Law Review* at 265-266. It therefore would seem all the more significant that Litwin and Wroth obtained such negative results from their interviewees concerning the media cross-ownership in one of the three "highly concentrated" cities, and the only such "small" city, that they studied.

In Spokane the "Carter" family owns the city's only two daily newspapers, the most successful of its three television stations, and AM and FM stations as well. Litwin and Wroth found from their interviews "a good deal of discontent . . . with Carter policies and power over the community," including allegations that:

> Carter newspapers, lacking print competition, are known for their lack of quality, their total dependence on wire services, and poor coverage of news. It was alleged, further, that the Carter TV station uses the nwspapers' stories practically verbatim and actively reviews and censors network news. One respondent called the two Carter newspapers "the two dullest, most inaccurate newspapers in the country."
>
> The Carters cross-promote their outlets very heavily—and give little or no publicity in the newspapers to the competing media—publishing incomplete listings and omitting references to important local TV documentaries.
>
> Both newspapers and TV are alleged to have avoided or white-washed local scandals, controversies, or problems. It was stated that the TV station avoids any kind

of public service broadcasting that would uncover the real problems in the city.

> Apparently (this from friends and critics alike), the Carters consider television strictly as an entertainment medium and make little effort to inform or enlighten the public as to the major problems and controversies in their community. One respondent told us that the Carters "tend to use their media to support causes which aid or beautify their holdings rather than the community at large." [See Litwin Study at 7-5—7-7.]

Litwin and Wroth thus concluded that "the Carter family media combinations come close to fulfilling the criteria set forth earlier for common ownership detrimental to the public interest. . . . From all the evidence we have assembled in Carterville, it appears likely that the Carter family may not be using its tremendous resources in the spirit of public service. . . . [T]here is definitely some question as to the value to the community of their common ownership of several major media outlets." *Id.* at 7-7—7-8.

2) *The Chronicle case.* The recent FCC license-renewal proceeding in the case of *Chronicle Broadcasting Co.*, involving the San Francisco Chronicle and its San Francisco TV station, KRON-TV, is peculiarly pertinent because it is the only case in which the FCC has conducted a full-dress hearing into allegations of harmful effects on news content arising from local media cross-ownership. (This does not mean, it should be noted, that it is the only case in which evidence of such effects has been presented to the FCC, much less the only case in which such evidence exists. For First Amendment reasons, the FCC takes the position that it will not inquire into alleged news manipulation unless presented with a special sort of evidence—"significant extrinsic evidence of deliberate distortion,"

such as "testimony of a station employee concerning his instructions from management," or documentary evidence of such instructions. *National Association of Theater Owners of Indiana*, 19 Pike & Fischer Radio Reg. 2d 799, 801 (1970); "*Hunger in America*," 20 F.C.C.2d 143, 150-151 (1969); *Democratic National Convention*, 16 F.C.C.2d 650, 657-658 (1969); *WMAL-TV*, 25 F.C.C.2d 705, 707 (1970). As has been noted, the shaping of the news to suit the interests of the media owner does not necessarily, or prudently, take the form of written memoranda or express instructions (especially not with acknowledgments of improper motive), but even when it does, station employees willing to produce such evidence and publicly accuse their employer before the FCC can be expected to be less than common.) In the *Chronicle* case, the FCC was presented by a disenchanted TV newsman with "extrinsic evidence" of news-management abuses, and it consequently held a lengthy hearing into such evidence on the station's renewal application. This resulted in an initial decision by the FCC's hearing examiner resolving all the issues in favor of the station and recommending renewal of the license, *Chronicle Broadcasting Co.*, 21 Pike & Fischer Radio Reg.2d 245 (1971), and in a 6-1 decision by the Commission upholding the examiner's findings and renewing the license. *Chronicle Broadcasting Co.*, 27 Pike & Fischer Radio Reg.2d 743 (1973). (The Commission agreed with and adopted all the findings and conclusions of the hearing examiner except for the few that it expressly modified. *Id.* at 761 (par. 41).)

Notwithstanding this result, the two opinions contain extensive findings of fact by the FCC and its hearing examiner that cannot be ignored, one would have thought, in a thorough search for evidence as to the exist-

ence of harmful effects from local-media cross-ownership. One would also have thought the case warranted attention for the unique light it throws on the desirability of leaving the FCC to deal with alleged abuses of media cross-ownership on a case-by-case basis, inasmuch as it offers the only available illustration of that approach. (So far as published sources are concerned, in addition to the FCC decisions themselves the *Chronicle* case has been discussed in two articles of mine, "Merger, Monopoly & A Free Press," *The Nation*, January 15, 1973, at 76, 82-86; and "The FCC's Nonbattle Against Media Monopoly," *Columbia Journalism Review*, January/February 1973, at 43.)

The pertinent evidence provided by the *Chronicle* case—all in the form of adjudicated findings of fact made by the hearing examiner and upheld by the FCC—is extensive, and only several of the most significant findings will be listed and discussed here:

a) The Chronicle Publishing Co., publisher of the morning and Sunday *Chronicle*, had signed in October 1964 a joint-operating agreement with San Francisco's other daily-newspaper publisher, the Hearst Corporation, which then published both the morning *Examiner* and the afternoon *News-Call Bulletin*, as well as a Sunday *Examiner*. The agreement provided for elimination of the *News-Call Bulletin*, for joint publication of the *Chronicle* in the morning, the *Examiner* in the afternoon, and a single combined paper on Sunday, and for a 50-50 split between the two publishers of the profits from all three papers. See the initial decision, 21 RR 2d at 261, 283 (pars. 40, 135). The agreement "was treated by its signatories as confidential until such time as it could be effectuated." *Id.* at 283 (par. 135). In September 1965, as the two publishers were about to put the agreement into

effect (which they did, with a public announcement, on September 10), news of the impending event began to break on other media outlets. Two TV stations and various radio stations in San Francisco covered the story, reporting "such things as meetings of unions which might be affected, and alterations on the physical plants of the newspapers involved." *Id.* at 283 and n. 52 (par. 135). But, with the single exception that on September 5 "the Chronicle published a reference to it [the impending merger] based on a story from the New York Times wire service" (*id.* at 283, par. 135), not one of San Francisco's three daily newspapers published anything on the story prior to the publishers' announcement of the *fait accompli* on September 10. *Ibid.*

The FCC further found that the Chronicle's TV station, KRON-TV, likewise refrained from covering the story prior to the publishers' announcement. Moreover, by virtue of its probe into the news process, the FCC was able to determine how this came about: the station was ordered to keep silent by its chief executive after he had discussed the subject with his boss, the publisher of the newspaper. The findings state that, parallel with the silence of the newspaper, "no mention of the matter was made on KRON-TV" (*id.* at 283, par. 135), and they continue:

> KRON's lack of coverage was not attributable to any unawareness on the part of its newsmen. All were familiar with the events which had excited the attention of their competitors, and many of them importuned their superiors for permission to cover the story. Their requests were refused with the explanation that the stories were rumors, not facts, and KRON would not broadcast the story until it had the facts. In practice this meant until the story had been confirmed by

the top management of one of the affected newspapers. [*Id.* at 283 (par. 136.]

The FCC specifically found that Mr. See, chief executive of the station and vice president of the Chronicle Publishing Company, had been consulted on the problem by the station's news executives. See thereupon "called Mr. Thieriot [president of the company and publisher of the newspaper] to ascertain the validity of the rumors." *Id.* at 284 (par. 138). "[B]ut Thieriot refused to comment. Whereupon See issued the instructions which blocked the KRON newsmen from broadcasting the story until the newspapers issued a statement on the matter." *Ibid.*

Such are the findings of fact. They establish that all three of the city's newspapers ignored an important local story whose coverage at that time could have harmed the interests of their owners, and further that the cross-owned TV station—on orders from its chief executive after he had conferred with his boss the newspaper publisher—simultaneously blocked its news staff from covering the story until the publishers made their announcement. Thus, just as one would expect, the cross-ownership had the effect of enlarging the impact of the self-interested noncoverage by the newspapers—which, as usual, were the only daily papers in town—to encompass the cross-owned TV station as well.

No less pertinent is the policy judgment expressed by the FCC and its hearing examiner in interpreting these facts. The examiner found, and the FCC agreed, "that KRON's actions during this period represent a reasonable reaction to a unique and delicate situation, rather than an attempt to suppress news." *Id.* at 284 (par. 140). While "obviously a local newspaper merger was highly newsworthy," KRON's "connection with Chronicle was known, and any comment it made would be publicly

regarded as based on 'inside' information"; since the station actually had no inside information, the public would have been misled, and "in such a situation, where neither course was free of hazards, See acted in a reasonable manner." *Id.* at 284 (par. 140), 306 (par. 257).

The FCC's policy judgment, then, is that in such situations the cross-media tie inevitably harms the public's interest in the news. Whichever course the station took, its audience would have suffered—either through not hearing about a "highly newsworthy" story, or through being misled into thinking it was getting "inside information" when it was not. Nor was this situation unique to the 1965 newspaper merger in San Francisco. The same dilemma and the same policy judgment apply to any of the frequently recurring cases in which a broadcast station must deal with a potential news story involving a commonly-owned newspaper (or other local media outlet), and, likewise, to the cases where a newspaper must deal with a story involving a commonly-owned local station. True, one may not accept the FCC's judgment that one outlet cannot cover a story involving its cross-owned sister with both the reality and the appearance of journalistic independence. But one is left in any event with the finding in the *Chronicle* case—the one case where the FCC has looked—that there was in fact no such independent coverage by the cross-owned station, that there was no coverage at all, and that this admittedly harmful effect on news content resulted directly from the cross-ownership tie.

(b) Also matters of undisputed proof in the *Chronicle* case were two memoranda issued to the KRON news staff. One, from the station's chief executive, stated that

> . . . stories relating to the "public relations image of any radio or television station in the 50 states and their

parent companies and/or networks or stories relating to the individual acts of officers, directors, or employees of the foregoing named organizations," should be brought to the attention of Messrs. See [the chief executive] or Constant [general manager] before being broadcast, or in their absence, Mr. Cothran [news director] should approve or disapprove the story.

The memo concluded by stating that it did not apply to any publishing company, "except, of course, the Chronicle Publishing Company." 21 RR 2d at 294 (par. 195). The second memo, from the news director, stated:

> You are all aware of company policy regarding the reporting of labor strife within the broadcast industry and/or local newspapers.
>
> However, it has become apparent that some of you do not understand the full intent of this policy.
>
> It is therefore mandatory that any story relating to broadcast industry labor problems and/or local newspaper problems be cleared with the News Director BEFORE airing.
>
> In case there is no contact possible with the News Director, the Program Manager or Production Manager should be contacted. If you cannot get clearance for some reason from the above then DO NOT RUN THE STORY. [*Id.* at 294-95 (par. 194).]

The hearing examiner and the FCC accepted the licensee's explanations that the chief executive issued the first memo "to promote accuracy in stories concerning that with which he was personally familiar," and that the news manager issued the second because he feared membership in the AFTRA union by some members of the KRON news staff "might affect their objectivity on stories relating to labor strife in broadcasting. Hence, he

regarded it as desirable that such stories be reviewed by persons unlikely to share the bias which he feared." *Id.* at 295 (pars. 196, 197). Although a newsman testified "that the existence of these memos resulted in self-censorship by newsmen," the examiner responded that "the record does not identify any story that was not covered, or that was covered differently, because these memos were extant." *Id.* at 295 (par. 198); see also 27 RR2d at 808.

These explanations and the FCC's acceptance of them notwithstanding, the memos are facts and it is not unreasonable to interpret them differently, to read them straightforwardly as evidencing management control of the news with respect to stories affecting the owner's interests. The newspaper-broadcast cross-ownership has an impact on both memos by expanding the scope of the stories affected—not just the "public relations image" of broadcasters, but of "the Chronicle Publishing Company" as well; not just "broadcast industry labor problems," but "local newspaper problems" as well. So if the memos are considered in any way undesirable, the cross-ownership necessarily expands their harmful impact. But this conclusion follows, at least with respect to the second memo, even if one accepts the explanation offered by the station and the FCC. Assuming that the memo was indeed designed to avoid news-staff bias on labor stories—and ignoring the obvious possibility of management bias the other way—it follows that the cross-ownership tie was harmful, since without it the alleged risk of staff bias would apply only to stories involving labor strife in broadcasting, and not in "local newspapers" as well.

(c) Several aspects of the *Chronicle* case provide significant evidence on the desirability of dealing with local-media cross-ownership through this kind of case-by-case examination of alleged abuses, evidence reflecting both

on the efficacy of this approach and on its possible affirmative disadvantages. The following examples relate to the efficacy question.

Several incidents in the case involved alleged news manipulation arising out of Chronicle's interest in cable-TV franchises in communities served by the TV station. At a time when Chronicle was competing for the franchise in South San Francisco, for example, KRON newsmen were told in a memo from the news director: "Between now and the first of February, let us concentrate a little heavier on *South* San Francisco—if warranted. HPS want to make those people happy." ("HPS" was Harold P. See, president of KRON and also of the Chronicle-owned cable-TV company.) 21 RR2d at 279 (par. 117). A follow-up memo ordered coverage of a library dedication in South San Francisco and added: "HPS wants to make sure that the mayor of South SF is prominent in any film we do!" *Id.* at 280 (par. 121). When the film taken was ruined in the lab, See wrote a letter of explanation to the mayor of South San Francisco; he admitted the letter "was motivated by CATV considerations," but denied the coverage was. *Id.* at 281-282 (pars. 124, 125). Weighing this evidence, the hearing examiner—who stated that "adverse conclusions under this issue are to be reached only if KRON's improper motives have been established by the most clear, convincing and unambiguous evidence," *id.* at 305 (par. 253)—found that the concern about the mayor demonstrated "an unusual interest in a political figure" on See's part (*id.* at 282, par. 129), but did not prove the TV coverage was motivated by the CATV interest. Both See and the station's news director denied such a motive, "and there is no direct evidence in contradiction. While such an intention might be inferred from [the second]

memo, the inference could only be based on a conjectural choice of possible motives for See's interest in South San Francisco. If KRON is to be convicted on circumstantial evidence, the circumstances should be considerably less ambiguous." *Id.* at 282, par. 128.

Another example: In both the foregoing incident and one other in which the KRON president had ordered unusual news coverage to coincide with Chronicle's application for a cable franchise in the community involved, several KRON newsmen testified that they asked the news director the reason for the coverage and he "responded that the coverage was relative to the seeking of a CATV franchise in that area." *Id.* at 277 (par. 106), 279 (par. 118). The examiner and the FCC held this evidence to be "without probative weight," because the news director and other such "middle management personnel" were not involved in the cable operations of the owner and thus "there is no presumption that their statements in this area are based on actual knowledge" (of the motive). *Id.* at 277 (par. 107). The examiner explained: "If, in fact, KRON programming was being used to advance Chronicle's business interests, it would have been necessary to issue appropriate orders to these people, but it would have been neither necessary nor natural to have informed them of the motives for such orders." *Ibid.*

These and other examples (discussed more fully in my article in *The Nation*, cited above) would seem to fuel substantial doubts as to whether the FCC, by employing the case-by-case approach, can in fact protect the public against abuses of local-media cross-ownership that involve manipulation of the news. Even when all the other evidentiary hurdles are overcome and the FCC holds a full hearing into such allegations, the *Chronicle* decision appears to establish, among other things, that improper

conduct in this area cannot be proven unless the media owner or its top executives, when they "issue appropriate orders" for news decisions designed to advance the owner's business interests, are imprudent enough to do what is "neither necessary nor natural" and declare their improper motives. (Even when they do the case may not be proved, for the FCC is then likely to confront—as happened in two other instances in the *Chronicle* case—a conflict of credibility between the executive and the newsman who claims to have heard the statement. See *The Nation*, January 15, 1973, at 85.)

d) Lastly, the *Chronicle* case also involved an instance of alleged distortion of *newspaper* content to protect the owner's TV interest. The FCC in its hearing order had cited an allegation that a Chronicle column by Charles McCabe "had been censored because the article urged 'citizens to contact the FCC about violence on television.'" 17 F.C.C.2d 245; *The Nation*, Jan. 15, 1973, at 85. At the hearing McCabe testified to the effect that this was true. *Id.* at 85-86. However, the examiner struck his testimony from the record on the ground that inquiry into what a newspaper prints would be inconsistent with the First Amendment, *id.* at 86, and the FCC agreed (citing other grounds as well). 27 RR2d at 823.

This ruling may well have been correct. Still, one may think McCabe's testimony stands as evidence of a harmful effect of media cross-ownership, in that the public was denied a newspaper column that apparently would have been printed if the newspaper owner had not had an interest in protecting local broadcast licenses. More important, however, are the implications for the case-by-case approach. The ruling suggests that insofar as abuses of local-media cross-ownership may involve distortion of the newspaper's content—such as suppression of stories em-

barrassing to the cross-owned station—these cannot be examined through the case-by-case approach, lest the First Amendment be offended. This would be a substantial impediment to the FCC's ability to protect the public from such abuses (the more so since records of the *broadcast* content are usually not available)—protection which, if divestiture is not required, will be the only safeguard the public has. On the other hand, if the FCC did deal thoroughly with serious allegations involving newspaper content, the disadvantages of such a government inquiry into what a newspaper prints or does not print, and why, are real and substantial. More broadly, the FCC proceeding in the *Chronicle* case consisted largely of just such an inquiry into the content, underlying decisions, and motives of *broadcast* news. If that kind of proceeding also carries policy disadvantages—if broadcast journalism is not so different from newspaper journalism so far as the policies of the First Amendment are concerned—then the fact that such an inquiry flows inevitably from the case-by-case approach—and becomes the only recourse if divestiture is rejected—would also seem worthy of notice in evaluating for policy-makers the "options for federal action" on local-media cross-ownership.

3) *The New Republic on Topeka.* Another case study of a "small" city where the only daily newspapers are under common ownership with a TV-AM-FM combination, comparable to Litwin's study of Spokane but conducted by a journalist, was carried out recently by Walter Pincus, executive editor of *The New Republic*, and produced findings remarkably similar to Litwin's on Spokane. See "Quality News: What Difference Does Ownership Make?," *The New Republic*, May 18, 1974, at 15. Pincus studied Topeka, Kansas, where the Stauffer chain owns the only newspapers, the only commercial VHF

station (there is an educational VHF and a commercial UHF), and an AM and FM station. He found, among other things, that the senior Stauffer, Oscar, "has seen journalism primarily as a money making venture . . . [and] that view is reflected today in the way his Topeka properties are run." *Id.* at 15-16.

> Staff members of the Topeka newspapers cannot recall a "crusade" in recent years other than promotions for charities. Investigative reporting is not encouraged and sometimes discouraged. One reporter covers the entire Kansas state government for both newspapers. The same is true for all the major county and city beats, such as the courthouse and city hall. . . .
>
> . . . The Stauffers have been active city boosters. Oscar's son Stanley, now president of the company, sits on the board of directors of the First National Bank of Topeka. Stories critical of the city and its future have a hard time getting into print. A troublesome urban renewal project in which the First National Bank has a financial interest has been given kid gloves treatment by the newspaper. When the city government was first approached about giving out a cable television franchise, the Stauffer participation in one CATV company was initially hidden and only disclosed publicly when one of the city's other radio stations broke the story. Stauffer thereafter withdrew. When campaign contributions to city commissioners from one cable TV company seeking the franchise turned up—checks which passed through the First National Bank—the story was held back by the newspaper until it broke on a radio station. The CATV franchise was finally awarded in 1971. The general counsel for Stauffer turns out to be a stockholder and principal figure in the winning company.
>
> . . . .

> What's it like to compete with Stauffer? The only people who do that are KTSB-TV, a relatively new UHF station, and a handful of Topeka radio stations most of which stick to music formats with "rip and read" news programming. With only three newsmen and one sound camera, the UHF station has its hands full. Many news sources deal only with the Stauffer outlets. . . .
>
> . . . .
>
> Staff members recognize the limitations under which they operate at Stauffer's newspaper and broadcast stations. "The monopoly discourages reporting," one newsman says. There are several cases where reporters have quit after being discouraged from venturing into controversial areas. . . . [*Id.* at 16.]

These findings, based on on-the-scene interviews by a respected journalist, would seem to be evidence of harmful effects from the media cross-ownership in Topeka. Pincus goes on, however, to express the view that the situation would not necessarily be improved by breaking up Stauffer's newspaper-broadcast cross-ownership, and it is therefore necessary to examine not only his findings but his opinions as well. Pincus reports one opinion in Topeka "that the competitive news situation would improve no matter who the new owner was"; a second that the journalists in town have " 'considerable pride' " and " 'would follow along' if a new, more aggressive kind of news gathering took hold," either "in any station news department or in the Stauffer paper itself"; and a third that " 'There is no guarantee things would be better. It would all depend on who is on the other channel. They do a better job now [than the UHF] because of the size of [the Stauffer] company.' " *Ibid.* (Pincus's brackets.) It is the third opinion with which Pincus agrees, explaining

that "Size and owner attitude play a key role in what a news organization can do. . . ." *Id.* at 16-17. He accordingly concludes that "Divestiture as promoted by the Justice Department will not in itself assure a better served public." *Id.* at 17.

This conclusion seems irrelevant to the policy issue. Even assuming that the burden of proof rests on those who favor diversity of control rather than those who favor concentration—an assumption contrary to existing law and policy—the issue is not whether diversity will "in itself assure a better served public," or will offer "any guarantee of better public service" (*id.* at 17). There is no way to assure or guarantee that a new owner produced by divestiture in a given case will not be "worse" than the existing owner. The issue is whether, over the many different cities, different media outlets, and different "owner attitudes" involved in cross-ownerships throughout the country, separate control of newspaper and broadcast facilities within each city is *likely* to produce better public service than common control. On this issue—the effect of ownership structure, other things being equal—the weight of Pincus's evidence on Topeka is clear, and it is the evidence that matters.

First, it should be noted that Pincus's study produced no finding of any *benefit* from the newspaper-broadcast cross-ownership in Topeka. The only suggestion of one lies in his apparent adoption of the opinion that the Stauffers with their TV station "do a better job now [than the UHF] because of the size of [the Stauffer] company." But VHF's are always dominant when they compete with UHF's; it is no surprise that the city's only V, whoever owns it, will have much higher ratings, greater resources, and hence more local news coverage than a "relatively new" U. Pincus writes that the Stauffer TV

station's "news dominance derives in part from its special advantage within a larger communications complex" (at 16), but since he immediately adds: "Kept strictly separate from the news operation of the newspaper—to avoid the appearance of monopoly—the station news personnel work for both the radio and television outlets" (*ibid.*), it is clear that he is talking only about the TV-radio complex, not the newspaper-broadcast one.

Otherwise, all of Pincus's findings on Topeka indicate that the public is indeed harmed by the newspaper-broadcast cross-ownership and would almost certainly benefit from its break-up. Given the complacent, apathetic journalism practiced by the Stauffers on all their media outlets in Topeka (much like the "Carters" in Spokane), one may well think that in this case, so far as "owner attitude" is concerned, a new owner of the TV station (or the newspapers) could hardly be "worse" and stands a good chance of being "better" (a result which, as a dividend, might well improve the competing Stauffer media as well). But in any event—and this point applies to all cross-ownership situations—the new owner would at least be *different* from Stauffer, and this would at least mean that the particular interests and attitudes of the Stauffers would no longer govern both the newspapers *and* the TV station. The public could hardly help benefiting. Thus, if Stanley Stauffer sits on the board of the First National Bank and "a troublesome urban renewal project" involving the bank "has been given kid gloves treatment by the newspaper," the TV station under non-Stauffer ownership would be free to report that story without kid gloves (as the TV station in Wichita, Kansas, has done with the story conerning the newspaper, the art museum, and the *Fourth* National Bank, see p. 19 supra). If the Stauffer participation in the CATV company was

only disclosed "when one of the city's other radio stations broke the story," and if the same thing happened with the story involving campaign contributions from the other cable company that passed through the First National Bank, separate ownership would free the television station to break such stories (as well as others that now may not get broken at all, because the other radio stations don't do it). Further, break-up of the newspaper-TV combination could be expected to help the other news media in town by ending the situation (also found by Litwin in Spokane) whereby "many news sources deal only with the Stauffer outlets."

Pincus also studied two other cities—Cheyenne and Casper, Wyoming—and here again the facts he found are pertinent, though they do not necessarily accord with his conclusions. In Cheyenne, where the McCraken interests sold the city's only TV station three years ago (under pressure from the Justice Department and the FCC) but still hold the only newspaper, an AM and FM station, and the cable-television franchise, Pincus reports that the papers are still unaggressive, that the TV station (now owned by a small broadcast chain based in Pennsylvania) struggles with limited resources, and that "almost everyone" he talked to agreed that "as far as the public can tell, things have not changed a bit." *Id.* at 17. Yet the *facts* Pincus reports on Cheyenne show that things are indeed better since the divestiture, if only in small ways, and do not in any respect suggest that they are worse. The new TV owner has "increased the station's news staff from three to five, sent a man to cinematography school and turned over the sound camera to the news department" (instead of the sales department). The new owner has also added a noontime news show and the shooting of news in color (hard to believe the public doesn't notice

this), using "almost six times more footage than before." *Ibid.* Meanwhile the McCraken radio station "was forced to hire one full-time newsman," where before it had none since its announcers "used the TV copy." *Ibid.* (Thus, contrary to the suggestion about Topeka, the TV station in Cheyenne has *expanded* its news facilities after separation from the newspaper and the radio stations, while the newspaper-radio complex has expanded its own facilities by adding the radio newsman.)

Finally, Pincus finds an "interesting comparison" in Casper, Wyoming—which he apparently did not visit—where "two aggressive, opinionated men run the competing newspaper and television stations," and "their clash" has produced better coverage of the Cheyenne statehouse than the Cheyenne media provide. "The generally higher quality of the Casper media is credited to the personalities and ambitions of the individuals at the top," Pincus reports (*id.* at 17). That may be, but it may also be that the journalistic competition between the newspaper and TV station had something to do with the fact that they are separately owned. It is hard to believe—and Pincus offers no basis for believing—that such competition would be equally likely if one of those "two aggressive, opinionated men" controlled both media outlets, or if they both worked for the same boss.

4) *The New York Times on Columbus; the Wall Street Journal on Bluefield.* Two other soundings by the national press into the effects of "media concentration" at the local level were made by the New York Times in 1970 and the Wall Street Journal in 1974. The Times article, particularly interesting because its attention to this subject was unplanned, dealt with a campaign for Congress in Columbus, Ohio. "Liberal Underdog Wages Frustrating Campaign for House in Columbus," by Steven

V. Roberts, New York Times, October 12, 1970, p. 20, cols. 3-8. The article reports the difficulties being encountered by James Goodrich, a Democrat running against an incumbent Republican, which include:

> The media are another obstacle. The Columbus Dispatch is owned by the Wolfe family, which does little to hide its Republican preferences. The Wolfes also own one of the three television stations in Columbus. A second is owned by the Taft family. The second newspaper is owned by Scripps-Howard, which is also Republican-oriented.
>
> The Goodrich campaign has thus received little press coverage. When Sargent Shriver came to town to raise money for the candidate, his press aide, Adrienne Bosworth, got in touch with The Dispatch.
>
> "The reporter told me, 'You're the wrong political party,' " Mrs. Bosworth said.
>
> Mr. Jordan [political editor of the Dispatch] concedes that the Goodrich campaign has gotten little attention. But the reason, he said, is that many of the Goodrich releases are "patently juvenile."
>
> To get his name more widely known, Mr. Goodrich purchased a series of television spots, but these had to be dropped when the money ran out. One reason was that without advance publicity, the Shriver meeting drew only 750 persons to a hall that seated 3,000.

It is possible, of course, that divestiture by the Wolfes of their newspaper or broadcast holdings in Columbus would produce a new owner just as blatantly Republican-oriented, just as unwilling to give news coverage to a Democratic congressional candidate, as the Wolfes and Scripps-Howard. It is also at least possible, however, that divestiture would produce a new owner for the Wolfes'

newspaper—or their TV station, or their AM or FM station—who would give Columbus more of the journalistic diversity it appears to need. The public would be unlikely to suffer from the change, and likely to benefit.

Another such slice of life was provided by the recent article in the Wall Street Journal on Bluefield, West Virginia ("Single Control of TV, Newspaper in One City Faces Increasing Fire," by Karen J. Elliott, July 23, 1974, page 1, col. 1). Although the reporter expresses no conclusions of her own, she reports facts and complaints about the performance of the media in Bluefield, where the Shott family owns the gas supply company, the paper supply company, the commercial printing plant, stock in both major banks, and the only newspaper, only TV, only FM, and the more powerful of the two AM stations. Among other things, ads in the Bluefield paper cost more to Bluefield merchants than to merchants in a nearby town; "blacks, miners and persons out of grace with the Shotts . . . complain that they get unflattering news coverage or none at all"; the cross-owned paper and stations allegedly "fail to reflect the fact that coal miners' black-lung disease is a serious concern among many in Bluefield," while "there is a weekly page in the newspaper reporting favorably on developments in the coal industry, and the paper annually prints a coal-industry supplement full of ads from mine operators"; when Julian Bond was scheduled to speak in Bluefield, "the Daily Telegraph gave the wrong date—a day late"; the Bluefield mayor, a close friend and alleged "yes man" of the Shotts, "not only appears on television six nights a week broadcasting sports but also often gets his picture in the Telegraph"; even a defender of the Shotts, who calls them "benevolent tyrants," notes that "The real danger here is the conflict of interest" arising out of their "financial involvement" in so many local enterprises (including city

hall through employment of the mayor); and Ned Shott himself, in answer to the criticism, says, "People around here just don't want to hear any other point of view." *Id.* at 22.

5) *Portland, Oregon.* Reminiscent of the *Chronicle* case is the way the two daily newspapers in Portland, Oregon, both owned by S. I. Newhouse, reported in 1971 the story of Newhouse's effort to purchase all the stock (it already owned 50 percent) of Mount Hood Radio and Television Broadcasting Corp., licensee of stations KOIN TV, AM, and FM in Portland. Newhouse agreed to purchase the stock, and applied to the FCC for approval, in January 1971. On October 1, 1971, the FCC announced its approval, over dissenting opinions by Commissioners H. Rex Lee and Nicholas Johnson. (Broadcast Action, Report No. 10163, October 1, 1971.) The latter wrote that the decision allowed Newhouse "to achieve an unhealthy degree of control over the minds of citizens of the Portland area by reason of their total ownership of a high-rating AM station, a high-rating TV station, an FM station, and two daily newspapers," and that "This kind of media domination is . . . the kind of situation the Department of Justice has traditionally and vigorously opposed—and opposes in this case." The Justice Department thereupon sent Newhouse and the other parties a letter stating that it planned to bring an antitrust action challenging the proposed transaction, and on October 13 Newhouse decided, as a result, not to consummate the acquisition. On December 3, 1971, Newhouse announced this decision. See "Newhouse Drops Deal on KOIN," Oregon Journal, Dec. 3, 1971; "Plan to Buy KOIN Halted by Newhouse," Portland Oregonian, Dec. 4, 1971.

The way these events were covered by the two Newhouse dailies in Portland, the *Oregon Journal* and the

Oregonian, was in turn covered by two other publications, the Vancouver *Columbian*, a daily newspaper in nearby Vancouver, Washington, and the *Oregon Times*, a monthly "alternative" paper in Portland. An article from the *Columbian* for December 9, 1971 ("Monopoly on News") reports:

> In the 11 months since Newhouse announced he would buy the stations, the news columns of the Portland papers have carried little information about the plans. The first stories last January indicated that Newhouse was buying the stations, subject to FCC approval. [One of these stories was "Newhouse Gains Control of KOIN Radio, TV Firm," the Oregonian, January 5, 1971.] In October, when the FCC voted 4-2 for approval, the Oregonian and Journal reported briefly and simply that the application had been approved. No mention was made of the split vote.
>
> A short time later, when the dissenting opinions of Commissioners Nicholas Johnson and H. Rex Lee became available, the Portland papers ignored them completely.
>
> A Columbian news story at the time reported [the content of the Johnson and Lee dissents] . . .
>
> Nothing further of the case was heard until last Wednesday when a monthly Portland publication, the Oregon Times, announced it was petitioning the FCC to reverse the KOIN decision . . . .
>
> The Times' action was not mentioned in the Journal until Friday and the Oregonian until Saturday, when the two papers reported the Newhouse announcement that the KOIN deal was off. Both Journal and Oregonian, quoting no one in particular, carefully pointed out that Newhouse stockholders had been told as far back

as Oct. 13 that the company was not going to buy KOIN because of Justice Department opposition. Neither newspaper explained why the first public announcement of that decision had been delayed until Dec. 3.

The Friday and Saturday stories reported that Newhouse had been advised by letter from the Justice Department that it planned to bring an antitrust action challenging the proposed transaction. That was the first that Newhouse readers knew that any officials of the government had questioned the sale.

Both Journal and Oregonian stories also reported for the first time that the FCC decision had been split and that Johnson and Lee had dissented. The contents of their dissents were not mentioned. The stories also provided the first information that the Oregon Times had sought a reversal of the FCC decision . . . .

The two articles from the Newhouse papers for December 3 and 4, 1971, appear to confirm this account. "Newhouse Drops Deal on KOIN," Oregon Journal, December 3, 1971; "Plan to Buy KOIN Halted by Newhouse," Portland Oregonian, December 4, 1971. Both state that Newhouse announced "Friday" that it had decided on October 13 not to consummate the transaction because of objections raised by the Justice Department (neither paper attempts to explain the delay); that Justice had opposed FCC approval of the transaction; that Commissioners Johnson and Lee dissented from the FCC decision (neither paper mentions the contents of the dissents); that Justice had sent Newhouse a letter threatening to sue to block the transaction ("It was after the Department of Justice letter that Newhouse Broadcasting decided not to go ahead with the purchase although public announcement of the decision was not made until Friday"); that

the Oregon Times had petitioned the FCC "this week" to revoke its approval of the sale, but that Newhouse "already had notified stockholders and the Justice Department of its decision to withdraw from the sale"; and so forth. I have found no indication that either paper had previously reported any of these facts, including the matters of public record such as the FCC dissents and the Justice Department opposition.

The story was also told in the *Oregon Times* for December 1, 1971, just prior to the public announcement by Newhouse, in part as follows:

> In Oregon, the Newhouse pattern of media concentration has had harmful effects on the quality—and the reliability—of local journalism.
>
> . . . .
>
> On October 1, after a long delay, the FCC gave its consent. The vote was not unanimous, and two of the seven commissioners filed strongly worded dissents, objecting to the increased monopolization of Portland media the stock transfer would mean. Of course, this was not discussed in the local Newhouse papers. It was not even mentioned.
>
> . . . .
>
> When the Justice Department heard about the proposed transaction, it sent a letter warning that if the purchase went ahead, it would prosecute Newhouse for a violation of the antitrust laws. The Oregon Times has not been able to get a copy of the letter, but the Justice Department has acknowledged that it sent such a letter.
>
> We know that editors at both local Newhouse papers are aware of the letter. In fact, the Justice Department

warning is common knowledge at both papers and Channel 16. Despite this, in an obvious attempt to save the Newhouse management from embarrassment, they have said nothing about these developments. There has been an absolute news black-out on the subject . . . .

6) *San Francisco*. In several articles and Congressional testimony, I have documented the effect of the newspaper-broadcast cross-ownership in San Francisco in keeping out of the newspapers, or burying therein, important stories involving the broadcast station:

a) In my statement at the House hearings on the Newspaper Preservation Act (*Hearings Before the Antitrust Subcommittee of the House Judiciary Committee*, Sept. 24, 1969, at 261-265), I reported that the FCC decision ordering a renewal hearing on the licenses of stations KRON-TV and KRON-FM, owned by the San Francisco Chronicle, was reported in the Chronicle by running the AP dispatch on page 47, and in the jointly-operated Examiner by running six paragraphs two days late at the bottom of page 4 (*id*. at 261-62); that the Chronicle did not report for more than a month (and the Examiner never did) the public admission to a Senate Subcommittee by the Chronicle's publisher that his company had been responsible for hiring private detectives who tailed, staked out, and pried into the private lives (in a way the FCC subsequently found improper) of the two San Francisco-area residents whose complaint to the FCC triggered the renewal hearing (though the Chronicle had earlier reported the publisher's statement that he did "not feel justified in commenting further on these allegations") (*id*. at 263); that neither paper reported an FCC motion filed by the Chronicle to disqualify FCC Commissioner Nicholas Johnson from the renewal case (*id*. at 264); and that they ignored or played down other newsworthy aspects of the controversy over the TV license.

b) I told essentially the same story in an article, "Media Monopoly," in *San Francisco Magazine*, October 1969, at 32, 58-65.

c) In another article, "A KRONic Case," *San Francisco Magazine*, April 1973, at 39-40, I recited further developments in the FCC renewal proceeding on KRON-TV—appeal of the hearing examiner's report to the full Commission, a renewed attempt to disquality Commissioner Johnson, a challenged failure to file a new license application for the next three-year period—that had not been reported in the Chronicle. *Id*. at 40.

d) In "The Colossus of Mt. Sutro," *San Francisco Magazine*, May 1973, at 26, I reported on how the newspaper-broadcast complex in San Francisco kept the public ignorant about construction of a high TV tower (the tallest structure ever built in San Francisco) on a wooded hill in the center of the city until it was too late to stop it. The tower is jointly owned by the city's four VHF TV stations (and used by the others), and the four owners admittedly entered a "gentlemen's agreement" against publicity for the project (*id*. at 30), an agreement that one of their employees, the director of engineering for the tower, admittedly invoked (according to this court affidavit) in telling a news crew from the local public TV station that they were not supposed to report the construction—"There's an agreement between the stations not to cover it." *Id*. at 62. The four stations accordingly did not air the story (at least they were unable in court to produce any evidence that they had) during the period from May 1966, when the project was approved by the city's board of supervisors (whose majority voted against it, but not by a sufficient margin to kill it), to August 1971, when the tower began to rise (even though the public TV station had gone ahead and aired the story six

months before, when clearing of the site began). *Id.* at 30. And, thanks to the newspaper-broadcast cross-ownership, the story was similarly suppressed in both of San Francisco's daily newspapers, with only a few minor exceptions, during the same period of more than five years. (The exceptions were a 1967 article in the Sunday magazine and one story in each paper reporting the final approval of the tower project by the city planning commission in September 1970, the Chronicle's story consisting of three sentences at the bottom of page 15. *Id.* at 28, 30, 62.) This story which all the city's TV stations were interested in seeing not covered thus *was* not covered, either by them or by the cross-owned newspaper or its joint-operating partner, during a lengthy period when strong public opposition to the project would almost certainly have arisen if the public had known about it, as in fact it subsequently did arise when the tower was too far built to be stopped. (These facts, including in particular the amount of TV and newspaper coverage and the agreement among the TV stations, were reported in my article on the basis of statements made in court by the stations or their representatives.)

7) *Salt Lake City.* At the Senate hearings on the Failing Newspaper Act (part 1, at 328-369), John J. Flynn, professor of law at the University of Utah, in the course of detailed testimony about the structure and effects of the concentrated media control in Salt Lake City, testified to a significant instance of news suppression by that city's jointly-operated dailies, whose ownership interlocks with that of several TV and radio stations in the same market. The story involved a $17-million bond issue on the Salt Lake City ballot in November 1963 for construction of a civic auditorium complex. "Both newspapers strongly supported the bond issue and actively campaigned in their editorial pages and news stories for a favorable public vote." *Id.* at 361. Their owners had a private interest in seeing the bond issue approved, Flynn stated, inasmuch as "several parcels of land in the area designated for the civic auditorium are owned by the Mormon Church [owner of one of the newspapers, two local TV stations, a powerful AM and an FM] and the area is adjacent to the temple grounds of the Mormon Church," thereby promising an economic benefit from the development of church-owned land and a further benefit from use of the proposed auditorium for overflow crowds attending major church functions at the temple—both of which benefits were realized, Flynn said, in lease arrangements for the church-owned land that followed approval of the bond issue. *Id.* at 362. The owners of the other Salt Lake City newspaper (and of a 35 percent interest in another local TV station), plus an ownership interlock with the only newspaper in nearby Ogden and another major radio station in Salt Lake City, also had an economic interest in passage of the bond issue, Flynn said, through major land holdings in downtown Salt Lake City. *Id.* at 362-364. While "many voters assumed that the auditorium complex would be used . . . by the University of Utah for basketball and other university events requiring a large auditorium," the fact was, Flynn testified, that "unknown to the general public and before the bond issue vote, the university authorities had taken action on plans to construct a sports complex on the university campus, a few scant miles from the site of the proposed civic auditorium complex." He continued:

> The university complex will have facilities similar to those planned for the civic auditorium complex. Many who knew of the university's plans believed the proposed civic auditorium was a useless duplication of

facilities in a metropolitan area that did not need and could not afford two such facilities . . . . The public learned none of these facts . . . from the News or Tribune, or their Salt Lake television and radio stations. I have no doubt that the news reporters and management of the two newspapers knew of these facts and appreciated their relevance to the exercise of the franchise by the public at the bond election. If they did not know, they must be judged incompetent, since many members of the university faculty, the members of the university's board of regents, and some prominent businessmen in our community knew of the university's commitment to build facilities on the university campus. Assuming the local news media and those who control it knew these facts and are not guilty of incompetence, I often wondered why these facts were not revealed so that the public could decide whether we were to have two large auditoriums within a few miles of one another . . . [*Id.* at 361-362.]

Professor Flynn's testimony seems confirmed by the response submitted to the Senate subcommittee by J. W. Gallivan, publisher of the Salt Lake Tribune, see *id.*, part 2, at 890. Gallivan's entire answer to Flynn on this point runs as follows:

> Both Salt Lake City newspapers carried extensive stories on the possibility of a University of Utah complex as far back as 1960—before Professor Flynn came to Utah—noting in headlines that "two sports palaces were in offing for area," reporting in a lengthy 1962 story (also before Professor Flynn came to Utah) that plans for the University arena were "taking shape." The University plans were widely reported even though the Board of Regents had made no final decision or commitment. The Regents did not decide to build until June of 1965—some 19 months after the bond election for the County Complex—and did not become committed to build until July, 1967. [*Id.* at 890.]

By citing stories "as far back as 1960" and another in 1962, but none any nearer to the bond issue election of November 1963, Gallivan appears to concede Flynn's claim that the story was kept out of the papers—and, one can only assume, the broadcast stations as well—during the time the voters were deciding on the bond issue. A separately owned TV station, as in Wichita (see page 19 *supra*), might have made a significant contribution to public knowledge on this issue.

8) *Discrimination in program listings.* Evidence that newspapers owning local TV or radio stations discriminate in their program listings and related materials in favor of their own stations and against competing ones has appeared in a number of places, accompanied by a variety of ingenious justifications. For example:

(a) According to a recent report in *Editor & Publisher*, the trade journal of the newspaper industry, an antitrust suit against the three newspaper-TV cross-ownerships in Dallas-Fort Worth by a bankrupt UHF station there, charging that the cross-owned papers refused to run equal program listings or any at all for the station, has been settled out of court for $535,000. "Station owner awarded $1/2m for papers' tv listing ban," *Editor & Publisher*, February 9, 1974, at 9. The article reports deposition testimony by the copublisher of one of the defendant newspapers stating "that it was not possible to give KMEC equal listings because it would have necessitated enlarging the television log, a condition that [would] not leave enough room for advertising on the page . . . . He said further that readers were not interested in UHF station programs and that they would be unattractive be-

cause of too much white space in the log for Channel 33 which was not an all-day operation." *Id.* at 9.

(b) A petition on file with the FCC to deny renewal of the TV and radio licenses in St. Louis held by the Pulitzer Company, owner of the St. Louis Post-Dispatch, includes a copy of a daily television and radio listing from the Post-Dispatch (for Thursday, January 17, 1974) which shows that Pulitzer's TV station, channel 5, is listing first in each time category, ahead of channels 2 and 4; that Pulitzer's radio station is listed first in each time category; and that the program listings for this radio station, unlike all the other radio stations, appear in bold-face print. In the Matter of Pulitzer Publishing Co., Amendment to St. Louis Broadcast Coalition Petitions to Deny, FCC Dockets BRCT-30, BRCT-641, BRCT-520, January 28, 1974, at 24 and Appendix F.

(c) In *Midwest Radio-Television, Inc.*, 17 F.C.C.2d 290 (1969), the FCC specified issues for a renewal hearing on the licenses for the TV and radio stations in Minneapolis-St. Paul which have interlocking ownership with both daily newspapers in Minneapolis and both daily newspapers in St. Paul. The action was taken on the basis of testimony before the Senate Antitrust Subcommittee, and a follow-up letter to the FCC, by the manager of a competing station, KSTP, in Minneapolis-St. Paul. He made specific allegations that the newspapers discriminated in favor of their own stations and against his, including an alleged failure to mention specific KSTP programming in a "Highlights" column. *Id.* at 295-296. (Another specified issue was based on testimony that the newspaper-owned radio station obtained the rights to broadcast various sports events through the power of the newspapers to give or withhold coverage of the teams involved, testimony which the FCC said raised "a substantial question of fact . . . ." *Id.* at 294-295.) In a subsequent ruling in the case, *Midwest Radio-Television, Inc.*, 19 Pike & Fischer Radio Reg.2d 861 (1970), by the vote of four to three, the FCC changed its mind, declaring that its concern about the specified issues had been dissipated by affidavits and other statements taken from employees and agents of the licensees denying that any such discrimination or misconduct had taken place. It would seem hard to deny after reading this opinion, however, that the evidence of abuse on which the FCC originally acted had not been tested and was still there. Moreover, the dissenting opinion sets forth two conflicts of evidence on the program-listing issue which are not denied by the Commission majority and which indicate the posture of the facts involved: (i) It was agreed that the Minneapolis papers failed on a certain Sunday to list the American Football League professional football game being carried by KSTP, while listing the National Football League game being carried by their station, but the papers said this was because KSTP failed to notify them which game it would broadcast, a failure KSTP denied; (ii) It was agreed that when the papers purchased the radio station in 1952 they changed the format of their daily radio listings to put it at the top, which they explained as evidencing not discrimination against other stations but "pride of ownership." *Id.* at 874 n. 3. (On the issue concerning rights to sports events the original evidence was likewise unimpeached, and the FCC majority expressly conceded the existence of conflicting testimony regarding what was said at a crucial meeting. *Id.* at 867 n. 12.)

(d) In *Providence Journal Co.*, 16 Pike & Fischer Radio Reg.2d 693 (1969), it was again apparently a matter of record that the newspaper gave more space to its own stations than to others, but the FCC accepted the

paper's explanation that it had "sent a letter to all radio stations . . . inviting all stations to file schedule highlights for inclusion in its regular radio column," and that "only six stations replied to the offer . . . ." *Id.* at 694.

(e) In *WTAR Radio-TV Corp.*, 19 Pike & Fischer Radio Reg.2d 661, 684 (FCC Review Board, 1970), where the newspaper listed the guests to appear each night on the Merv Griffin show, broadcast by its cross-owned station, but not on the Johnny Carson show, broadcast by its competitor, the explanation given and accepted was that the Merv Griffin shows were just starting.

(f) In *Cumberland Gap Broadcasting Co.*, 24 F.C.C. 2d 393 (1970), the FCC held a hearing into the operations of a newspaper-radio combination in Middlesboro, Kentucky; the owner of the town's only newspaper and of one of its two AM stations was applying for, and ultimately got, a construction permit for the town's only FM station. The FCC's hearing examiner found the following facts which are relevant here:

> . . . .The newspaper publishes a daily schedule of the programs broadcast on Station WMIK [the station it owns]. Such service is provided without charge and is not accorded to other radio stations that are received in the area. The newspaper also carried the program logs of various television stations in Knoxville, Lexington, Johnson City and Bristol . . . . No one has requested that the other Middlesboro AM station be carried; but that service would be provided upon request . . . .
>
> The newspaper advertises on the radio station and vice versa . . . . The [newspaper] has not advertised on the other Middlesboro AM station . . . . [*Id.* at 397-398.]

9) *Newspaper-radio cross-ownership in a small town.* In the case just cited from Middlesboro, Kentucky, *Cumberland Gap Broadcasting Co.*, 24 F.C.C. 2d 393 (1970), the FCC held a rare hearing into newspaper-radio cross-ownership in a small town, occasioned by the cross-owner's application for the town's only FM license. (In a number of other cases where the owner of a town's only newspaper and only AM has applied for the only FM, the FCC has granted the application *without* a hearing; see, *e.g.*, *Manhattan Broadcasting Co.*, 23 Pike & Fischer Radio Reg.2d 1182 (1972).) Although the hearing examiner in the Middlesboro case gave the cross-owner's operations a clean bill of health and recommended approval of the FM application, which was done, a number of the facts found (in addition to those cited above) consitute evidence that the public in Middlesboro does suffer harmful effects from the cross-ownership, particularly in the form of diminished diversity and competition in news and opinion about local affairs.

Middlesboro is a "small, isolated community" in which the same family controls the only newspaper (the Daily News), one of the two AM stations (WMIK), and now, by virtue of the FCC's decision, the only FM station. The hearing examiner found that the newspaper-owned AM station "does not editorialize," having "a long-standing policy . . . not to get involved in controversial community matters" (24 F.C.C.2d at 397), and that "the FM station is not expected to editorialize" either (*id.* at 399). He further found, with respect to the news operations of the newspaper and the AM station:

> . . . In fact, there is active competition between the two staffs, although the *Daily News* provides copy of local news stories to Station WMIK for which the newspaper is not compensated. In addition, *Daily*

News reporters inform the station of fast breaking news events and a similar service is provided by the station to the newspaper. However, this is not standard practice. The newspaper does not telephone or otherwise inform other local radio stations of news stories. Such a procedure would be considered tantamount to "Montgomery Ward going over and putting in a showcase window in J.C. Penney's window."

. . . As previously noted, the newspaper provides Station WMIK with news stories before the other media gain the information as published in the *Daily News*. Even in matters of public urgency, news information gathered by its staff is not distributed to other radio stations, but ultimately becomes available on the news wires.

. . . .

Initially separate teams of reporters are sent by the station and newspaper to cover events. However, Middlesboro town meetings are covered by one media and the information is thereafter shared with the other . . . .

[24 F.C.C.2d at 397-398; citations to record omitted.]

10) *Economic abuse*. There is adjudicated evidence of abusive economic practices involving use of the leverage provided by newspaper-broadcast cross-ownership. In *Sarkes Tarzian, Inc.*, 18 Pike & Fischer Radio Reg. 2d 693 (1970), the FCC found that the company controlling a daily and weekly newspaper and a TV, AM, and FM station in Bloomington, Indiana—one of the cities that still have competing dailies—was offering a package rate plan whereby purchasers of a certain amount of newspaper advertising received a credit, in half that amount, applicable to any advertising they purchased on any of

the three broadcast stations. The FCC found this "inconsistent with the public interest," since "the licensee is clearly using the leverage of the exclusive broadcasting franchises as a means of gaining an advantage over a competitor in another field (here the newspaper field)," and accepted the licensee's statement that it would discontinue the practice. *Id.* at 694-95.

In the *Kansas City Star* antitrust case, where the newspaper had a TV and radio license in Kansas City, the jury found (among other things) that ". . . The Star used its dominant position to aid in its newspaper advertising, making it clear in some instances that advertisers could not buy time on WDAF-TV unless they also advertised in The Star papers," and in another instance refusing to sell television time to a magazine that competed with the papers. *Kansas City Star Co.* v. *United States*, 240 F.2d 643, 656 (8th Cir.), *cert. denied*, 354 U.S. 923 (1957).

11) *New York City*. An article in [MORE] for December 1971, "News Blunts Probe of Video Mate," by Peter A. Lance, page 7, describes coverage by the New York Daily News of the FCC hearing on the license-renewal contest involving its commonly owned New York television station, WPIX. The article states that the News decided to run Associated Press coverage of the hearing, rather than assign its own reporter, so as to avoid charges of conflict of interest, but that "alas, the news service did it too well. When the copy was ripped off the Teletype in the *News* city room, editors discovered that The AP had not just reported testimony that made WPIX look good . . . ." The article goes on to compare, in detail, the AP dispatches on the hearings as they appeared on the wire and the edited versions as they appeared in the News, documenting its charge that passages reporting cross-examination of WPIX witnesses or other material

unfavorable to WPIX was customarily deleted, while favorable material was left in and played up in headlines. It states that on two days when "witnesses charged WPIX with racial bias in programming" and "the testimony went totally against the station," and the AP dispatches accurately reflected this (the AP leads are quoted), "the News did not print a line of either story."

12) *Newspaper-cable or broadcast-cable ties*. There is evidence of harmful effects stemming from the interest of the local newspaper owner, or a local broadcaster, in cable-television systems or franchises in the same community. While this does not bear directly on the issue of newspaper-broadcast cross-ownership, it does show harmful impacts, especially on media content, resulting from one form of local-media cross-ownership. If newspapers tend to ignore, slant, or buy the story of local cable franchising when their own ownership seeks the franchise, as this evidence shows them doing, no reason is apparent why the same tendency does not apply to other stories in which the newspaper's owner is interested, such as ones involving a cross-owned broadcast station, or why it does not apply to the content of other local media outlets he controls, such as a broadcast station. I cite a variety of such reports on coverage (or noncoverage) of the franchising process by interested newspapers (all from published sources) in my Reply Comments in FCC Dockets 18110 and 18891 (at 120-146) and in my article, "State, Federal and Local Regulation of Cable Television," 47 *Notre Dame Lawyer* 685, 693-694, 770-774, 794-803 (1972). See in particular the Reply Comments at 126-128 (episode in Tacoma, Washington); *id*. at 139-140 and 47 *Notre Dame Lawyer* at 697 & n. 79 (San Francisco); *id*. at 771-774 & n. 498 (Buffalo). See also "Blackout in Lansing," by David Anderson, *Columbia*

Journalism Review, March/April 1974, at 26, quoting statements by (among others) two former news employees of a Lansing, Michigan, TV station that they were ordered to deny news coverage to certain members of the city council who opposed the station owner's application for the local cable franchise. (These charges are also on file before the FCC, which has ordered a hearing on renewal of the station's license; see also the denial by the station owner in *Columbia Journalism Review*, July/August 1974, at 52.)

But the most thoroughly documented evidence of the harmful effects of newspaper-cable cross-ownership, which I reported at length in both my Reply Comments (at 129-137) and the Notre Dame article (at 693-694, 770-771, 798-799), and which has also been filed as comments with the FCC in the cross-ownership proceeding, Docket No. 18110, is a study by Alfred H. Hemingway, Jr., then a student at the Stanford Law School, which focused on San Jose, California, and the adjoining cities of Campbell and Santa Clara. "Daily Newspaper and CATV Local Market Crossownership: The Public Interest in CATV and Its Potential Defeat Through News Management, Conflict of Interest, and System Underdevelopment," August 1971, filed with the FCC as Reply Comments in Docket No. 18110. Without going into detail here, the cable-TV franchise in each of those cities was awarded to a joint-venture consisting of the owner of San Jose's two daily newspapers and the licensee of its only VHF television station. Hemingway researched the two newspapers for the period in question and reports, for example, that while these papers commonly published news of matters due to come up at meetings of the city councils of both San Jose and Campbell, in the case of the cable-franchise awards by both cities neither paper

mentioned the matter for a period of at least 40 days prior to the award. See Hemingway study at 26-27 & ns. 118, 121, reported in 47 *Notre Dame Lawyer* at 693. The awards themselves received less than conspicuous coverage in the two newspapers (*e.g.*, the San Jose award under a headline, "City Eyes Curfew Change," in two paragraphs sandwiched between an item on curfew ordinance revisions and another on the change of a street name), and in each case the stories did not mention that the company winning the franchise was controlled by the local newspapers and television station, referring only to the corporate names of the joint venturers. Hemingway study at 37, reported in 47 *Notre Dame Lawyer* at 693 n. 50.

13) *Broadcast editorializing*. The effect of newspaper-broadcast cross-ownership in discouraging broadcast editorializing is a subject Rand does deal with (see "options" report at 9, "current knowledge" at 135-136, 165-166), but I think inadequately. The available evidence, though not as comprehensive or authoritative as one would like, is considerably more substantial than Rand reports. The evidence Rand cites is the Litwin-Wroth study (George H. Litwin and William H. Wroth, *The Effects of Common Ownership on Media Content and Influence*, July 1969, filed by the NAB in FCC Docket No. 18110), and a consistent statement of Cherington, Hirsch and Brandwein, eds., TELEVISION STATION OWNERSHIP: A CASE STUDY OF FEDERAL AGENCY REGULATION (1971), at 98 (see "current knowledge" at 135-136). Also cited, with apparent agreement, is the discussion of this aspect of the Litwin-Wroth study in my Reply Comments before the FCC. See *id.* at 136.

Rand fails to do justice either in reporting the evidence or appraising its significance. In reporting the findings of the Litwin study on this point, Rand states ("current knowledge" at 135-136):

> . . . They found that newspaper owned television and radio stations editorialize less than other broadcast stations. In one of the newspaper-television combinations studied, for example, "there apparently is no sharing of any kind between the print and broadcast operations. The TV and radio stations do not editorialize because, first, they don't feel it is their role to make judgments on public issues, and second, they want to avoid any talk of 'collusion' in the policies of the broadcast and print operations."

Rand continues, referring to my Reply Comments: "Barnett suggests that while this finding is subject to the same methodological problems as the rest of the Litwin and Wroth study, it should be more reliable than the other findings because it 'is one to which the interviewees could be expected to provide reliable answers. Not only is it something they would know, but more important, it is something as to which the pro-station bias built into the interview sample . . . would probably not be operative'." *Id.* at 136, quoting my Reply Comments at 148 n.1.

The only thing Rand specifically reports about Litwin's "finding" on editorializing is, thus, the quoted statement referring to "one of the newspaper-television combinations studied." Rand ignores the totality of Litwin's interview results on this subject, which are far more broadly based, detailed, and significant than this one example—and which, in fact, are what I was referring to in the passage taken from my Reply Comments (see *id.* at 147-148 & n.1.). As I there pointed out, Litwin and Wroth interviewed owners, managers, and top profes-

sional staff of 30 broadcast stations and newspapers in six cities, and posed a multipart question on editorializing which yielded significant differences between singly-owned and commonly-owned media. Asked whether their station or newspaper editorialized on "political questions, candidates," 64 percent of the personnel from singly-owned media said yes, as against 47 percent from commonly owned media. On "violence," the percentages were 59 and 50; on "obscenity–pornography," 60 and 43; and on "smoking." a telling difference of 52 to 17 percent. See Litwin Study at 5-10 and Appendix C at 3. As I suggested in my Reply Comments and as Rand apparently agrees, there is no evident reason why these responses should be considered unreliable or infected by bias; indeed, their results run against the bias evident elsewhere in the study.

In the "options" report (at 9), Rand treats the point this way:

> . . . [I]n the category of broadcast editorializing, the Litwin study sponsored by the National Association of Broadcasters suggests that newspaper owned stations editorialized *less* than others, presumably at least in part to avoid charges of editorial collusion. This result is based on a small sample and cannot be extrapolated to all newspaper-television combinations without further evidence. But given the FCC's encouragement of broadcast editorials, Litwin's result argues against any claim of superior service by newspaper licensees.

Again, there is no indication of what Litwin's specific findings on the subject were, or of the size of his sample (30 media outlets in six cities), or of why the sample was so "small" as to be summarily dismissed, even though the results tally with the evident motive of cross-owners to avoid broadcast editorializing so as to avoid charges of

collusion or correlation. Nor does Rand note that the results also tally with other FCC cases, such as the *WHDH* case (quoted in my Reply Comments at 152-153), where the station expressly (and unsuccessfully) defended its policy-against-editorializing as "a factor which minimizes any question of concentration of control flowing from the common ownership of newspaper and broadcast interests." *WHDH, Inc.*, 15 Pike & Fischer Radio Reg. 2d 411, 427 (1969), *aff'd sub nom. Greater Boston Television Corp.* v. *FCC*, 20 Pike & Fischer Radio Reg. 2d 2052, 2076 (D.C. Cir. 1970). See also, *e.g., Cumberland Gap Broadcasting Co.*, 24 F.C.C. 2d 393, 397, 399 (1970). Finally, Rand does not indicate why, to the extent it concedes any force to Litwin's results on editorializing, it views them only as "argu[ing] against any claim of superior service by newspaper licensees," and not as supporting a charge of inferior service.

14) *One unexplored source*. The Senate Communications Subcommittee has recently conducted lengthy hearings, which concluded July 31, 1974, on the pending broadcast license renewal bill, including among other things the issues it raises concerning concentrated control of the media. I have not seen the record of those hearings, but I would not be surprised if it contained examples of harmful effects from local-media cross-ownership. If I were conducting a thorough search for such evidence, that is one place I would look.